BRB No. 06-0321 BLA

STEPHEN R. CAUDILL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BRENHAM & BAKER COAL COMPANY, C/O AMERICAN ELECTRIC POWER	)	DATE ISSUED: 08/14/2006
	)	
and	)	
	)	
QUAKER COAL COMPANY/AEP C/O CANTLONG ASSOCIATES, INCORPORATED	)	
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Stephen R. Caudill, Hager Hill, Kentucky, *pro se*.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Denial of Benefits (04-BLA-6138) of Administrative Law Judge Thomas F. Phalen, Jr. on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). In a Decision and Order dated December 21, 2005, the administrative law judge credited the miner with at

least twenty-one years of coal mine employment[1] and found that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202 and failed to establish total disability at 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

In finding the x-ray evidence insufficient to establish the existence of pneumoconiosis, the administrative law judge properly noted that the relevant x-ray evidence of record consists of four readings of three x-rays. Decision and Order at 6, 10. An October 8, 2002 x-ray was permissibly found to be negative based on the uncontroverted negative readings by Dr. Halbert, a Board-certified radiologist and B reader, and Dr. Wheeler, whose qualifications are not contained in the record.[2] *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-65 (2004)(*en banc*); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon*.); Director's Exhibit 11; Employer's

[1] The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] The October 8, 2002 x-ray was also read for quality only (Quality 1) by Dr. Barrett, a Board-certified radiologist and B reader. Director's Exhibit 12.

Exhibit 1; Decision and Order at 6, 10. An April 3, 2004 x-ray was read once as negative by Dr. Dahhan, a B reader, and, therefore, was permissibly found to be negative by the administrative law judge. *Staton*, 65 F.3d at 59, 19 BLR at 2-279; *Dempsey*, 23 BLR at 1-65; *Cranor*, 22 BLR at 1-7; Decision and Order at 10. Finally, an x-ray dated January 31, 2005 was also permissibly found to be negative based on the uncontroverted negative B reading by Dr. Broudy. *Staton*, 65 F.3d at 59, 19 BLR at 2-279; *Dempsey*, 23 BLR at 1-65; *Cranor*, 22 BLR at 1-7; Employer's Exhibits 1, 2; Decision and Order at 10. Therefore, as the administrative law judge permissibly concluded that based on the absence of positive x-ray readings in the record, claimant failed to meet his burden of proof to establish the existence of pneumoconiosis by x-ray evidence, *Staton*, 65 F.3d at 59, 19 BLR at 2-279; *Dempsey*, 23 BLR at 1-65; *Cranor*, 22 BLR at 1-7; Decision and Order at 10, we affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

The administrative law judge also found, correctly, that the record contains no biopsy evidence to be considered pursuant to 20 C.F.R. §718.202(a)(2), and that the presumptions set forth at 20 C.F.R. §§718.304, 718.305, and 718.306 are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305, 718.306; Decision and Order at 10.

Finally, the administrative law judge considered the medical reports of Drs. Ammisetty, Broudy and Dahhan pursuant to 20 C.F.R. §718.202(a)(4). Review of the record indicates that in a report dated October 8, 2002, Dr. Ammisetty diagnosed legal pneumoconiosis in the form of chronic bronchitis due to a combination of cigarette smoking and coal dust exposure. Director's Exhibit 11; Decision and Order at 11. By contrast, in reports dated April 12, 2004 and January 31, 2005, Drs. Dahhan and Broudy, respectively, opined that claimant does not suffer from either clinical coal workers' pneumoconiosis or any coal dust related lung disease. Employer's Exhibits 2, 4; Decision and Order at 7-8, 12. Dr. Dahhan reiterated his conclusions in his deposition of May 20, 2004. Employer's Exhibit 3.

The administrative law judge acted within his discretion in finding the opinion of Dr. Ammisetty to be unreasoned because the physician provided no objective basis for his diagnosis of legal pneumoconiosis, but, rather, specifically indicated that his diagnosis was based solely on claimant's subjective symptomology.[3] Director's Exhibit

[3] The administrative law judge properly acknowledged that as he had found the opinion of Dr. Ammisetty, the Department of Labor physician, to be unreasoned, consequently, the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a credible pulmonary evaluation on the issue of the existence of pneumoconiosis, as required by 20 C.F.R. §725.406(a). The administrative

11; Decision and Order at 11. By contrast, the administrative law judge permissibly found that the opinions of Drs. Dahhan and Broudy were well-reasoned and well-documented, and that therefore, claimant failed to establish the existence of pneumoconiosis by a preponderance of the evidence. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); Director's Exhibit 11; Employer's Exhibits 2, 4; Decision and Order at 11. As the administrative law judge permissibly analyzed the medical opinions of in light of the studies conducted and the objective indications upon which the medical conclusions are based, *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988), we affirm his finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

We further affirm the administrative law judge's finding that claimant failed to establish total pulmonary or respiratory disability at 20 C.F.R. §718.204(b). Considering the pulmonary function and blood gas study evidence of record, the administrative law judge properly found that as all of the pulmonary function and blood gas studies are non-qualifying,[4] claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii). *See Beatty v. Danri Corp.*, 16 BLR 1-11, 1-13-14 (1991); Director's Exhibit 11; Employer's Exhibits 2, 4; Decision and Order at 6-7, 12. In addition, the record contains no medical evidence that shows that claimant suffers from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 12. Because substantial evidence supports the administrative law judge's findings, we affirm the administrative law judge's finding that total disability is not established pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii).

Finally, the administrative law judge properly found that as Drs. Ammisetty, Dahhan and Broudy unanimously opined that claimant retains the respiratory capacity to perform his usual coal mine work or comparable work in a dust free environment,

---

law judge permissibly concluded, however, that as Dr. Ammisetty had provided a credible opinion on the issue of total disability, and as the evidence of record failed to establish total disability at 20 C.F.R. §718.204(b), a critical element of entitlement, any error in failing to provide claimant with a complete, credible pulmonary evaluation on the issue of pneumoconiosis is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); Decision and Order at 13.

[4] A "qualifying" pulmonary function or blood gas study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B, C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

claimant failed to establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(iv). Based on the foregoing, we affirm the administrative law judge's finding that the preponderance of the medical opinion evidence fails to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986).

It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility. *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). Because the administrative law judge examined each medical opinion "in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based," *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103, and explained whether the diagnoses contained therein constituted reasoned medical judgments, we affirm the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or that he is totally disabled pursuant to 20 C.F.R. §718.204(b). *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-120 (6th Cir. 2000).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge