BRB No. 97-1699 BLA

BETHEL M. GAYHEART	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GUM BRANCH COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Albert A. Burchett, Prestonsburg, Kentucky, for claimant.

Mark E. Solomons (Arter & Hadden), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (97-BLA-190) of Administrative Law Judge Daniel J. Roketenetz denying benefits 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). This case is before the Board for the third time. Claimant initially filed for benefits on September 24, 1975, which application was denied by the District Director on August 17, 1976, and again on April 15, 1980. Director's Exhibits 1, 20, 21. Claimant requested a formal hearing, and on January 12, 1988, Administrative Law Judge Peter McC. Giesey issued a Decision and Order awarding benefits to claimant pursuant to 20 C.F.R. Part 727, based on his finding that claimant established twelve years of coal mine employment and invocation of the interim pesumption at 20 C.F.R. §727.203(a)(1), (4), which presumption was unrebutted.

On appeal, the Board vacated the award of benefits and remanded the case for the administrative law judge to weigh the evidence prior to finding invocation established pursuant to 20 C.F.R. §727.203(a)(1), (4), to reconsider whether employer established rebuttal of the presumption at 20 C.F.R. §727.203(b)(3), (4), and to consider entitlement pursuant to 20 C.F.R. Part 718, if benefits were not awarded under Part 727. *Gayheart v. Gum Branch Coal Company*, BRB No. 88-1311 BLA (May 30, 1990)(unpub.). On remand, the administrative law judge again determined that claimant established invocation of the interim presumption pursuant to Section 727.203(a)(1), and reiterated his previous finding that rebuttal had not been established. Accordingly, benefits were again awarded.

On appeal, the Board again vacated the award of benefits and remanded the case for the administrative law judge to consider whether invocation of the interim presumption had been established in light of *Director, OWCP v. Greenwich Collieries, [Ondecko]*, 114 S.Ct. 2251 (1994), *aff'g sub nom., Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993), and to reconsider his rebuttal findings. *Gayheart v. Gum Branch Coal Company*, BRB No. 92-0699 BLA (Dec. 28, 1994)(unpub.). The case was transferred to Administrative Law Judge Richard Huddleston, who remanded the claim to the district director for the development of additional evidence. The district director denied the claim on July 12, 1996, and claimant requested a formal hearing. Director's Exhibit 112.

The case was reassigned to Administrative Law Judge Roketenetz who found that claimant failed to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a), or the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. In the instant appeal, claimant contends that the administrative law judge erred by failing to find invocation of the interim presumption at Section 727.203(a)(1), (4). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order denying benefits, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by

substantial evidence and there is no reversible error contained therein. Pursuant to Section 727.203(a)(1), the administrative law judge considered each x-ray reading of record, and the qualifications of each reader, and rationally credited the greater number of negative readings submitted by those physicians who are board-certified radiologists and B-readers.[1] *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Contrary to claimant's contention, the administrative law judge is not required to consider the party affiliation of the expert hired to interpret claimant's x-ray. *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991). Pursuant to Section 727.203(a)(4), the administrative law judge thoroughly considered every medical report of record and rationally rejected those opinions which he felt were not supported by their underlying documentation, and credited those opinions which he found to be better supported by the objective evidence of record. The determination of whether a medical report is reasoned is within the discretion of the administrative law judge. *Mosely v. Peabody Coal Co.*, 769 F.2d 357 (6th Cir. 1985); *Director, OWCP v. Rowe*, 710 F.2d 251 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). As we find that the administrative law judge has provided a rational basis for his findings, we conclude that substantial evidence supports the administrative law judge's determination.[2]

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[1] A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination by the National Institute of Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135 n.16, 16 BLR 2-1 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

[2] We affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a), as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra; Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's findings that claimant has not established invocation of the interim presumption pursuant to Section 727.203(a), as it is supported by substantial evidence, and in accordance with law.

Accordingly, the Decision and Order on Remand of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge