BRB No. 98-1446 BLA

EDWARD BITEL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
READING ANTHRACITE 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 of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Richard Davis (Arter & Hadden, LLP), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1464) of Administrative Law Judge Ralph A. Romano 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). The administrative law judge found, and the parties stipulated to, twenty-eight years of coal mine employment and based on the date of filing, adjudicated the claim

pursuant to 20 C.F.R. Part 718.[1] Decision and Order at 3. The administrative law judge concluded that the newly submitted evidence of record was insufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c), and thus, a material change in conditions was not established pursuant to 20 C.F.R. §725.309(d). Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish total disability due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. Part 718. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not 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 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20

[1] Claimant filed his first claim for benefits on May 23, 1973, which was denied by the district director July 10, 1980. Director's Exhibit 30. Claimant filed a second claim on February 20, 1988, which was denied by the district director on April 5, 1988. Director's Exhibit 32. Claimant filed the instant claim on January 21, 1997, which was denied by the district director on April 16, 1997. Director's Exhibits 1, 17. Claimant requested a formal hearing on April 21, 1997. Director's Exhibit 18.

C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Claimant contends that the administrative law judge erred in relying solely on the single negative interpretation of the January 6, 1998 x-ray to find the x-ray evidence insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1), and ignoring the positive interpretations of the February 19, 1997 x-ray by three board-certified, B-readers in the instant case, the administrative law judge credited the negative interpretation of the January 6, 1998 x-ray as it was the most recent x-ray of record by almost one year and was interpreted by a Board-certified, B-reader. We agree with claimant that the administrative law judge did not sufficiently discuss the positive readings of the 1997 x-ray and erred in summarily crediting the negative reading of the 1998 x-ray because it was the most recent x-ray. *See Thorn v. Itmann Coal Co.*, 3 F.3d 713, 18 BLR 2-16 (4th Cir. 1993); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). The administrative law judge considered the entirety of the medical opinion evidence of record, and permissibly accorded greater weight to Dr. Dittman's finding of no pneumoconiosis than to the contrary opinions of Drs. Kraynak and Kruk, as it was better documented and reasoned and supported by the objective evidence, and the opinion of Dr. Rashid. The administrative law judge also permissibly accorded it greater weight based on Dr. Dittman's superior qualifications.

Director's Exhibits 3, 6, 15; Employer's Exhibits 1, 3-5, 8; Decision and Order at 9; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985). Contrary to claimant's contention, the administrative law judge is not required to accord greater weight to Dr. Kraynak as claimant's treating physician. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). In light of the administrative law judge's error in his evaluation of the x-ray evidence, however, we remand for the administrative law judge to consider the physicians' opinions along with the x-ray evidence at Section 718.202(a)(4). *Penn Allegheny Coal Co. v. Williams*, 111 F.3d 21, 21 BLR 1-104 (3d Cir. 1997).[2]

[2] The administrative law judge's findings pursuant to Section 718.202(a)(2) and (a)(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Turning to the issue of total disability, contrary to claimant's argument, the administrative law judge also permissibly determined that the evidence of record was insufficient to establish total disability pursuant to Section 718.204(c).[3] Contrary to claimant's contention, the administrative law judge permissibly accorded greater weight to the opinion reports of Drs. Levinson and Dittman invalidating the three qualifying pulmonary function studies of record, based on those physicians' superior qualifications.[4] Claimant's Exhibits 4, 13; Employer's Exhibit 8; Decision and Order at 11; *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Clark*, *supra*; *Winchester v. Director, OWCP*, 9 BLR 1-777 (1986). Further, the administrative law judge properly considered the entirety of the medical opinion evidence of record and permissibly accorded greater weight to the opinion of Dr. Dittman, finding no total disability, than to the contrary opinions of Drs. Kraynak and Kruk, as it was better reasoned, documented, and supported by the objective evidence of record, and the opinion of Dr. Rashid. The administrative law judge permissibly accorded greater weight to the opinion of Dr. Dittman's based on his superior qualifications. Director's Exhibits 3, 6, 15; Employer's Exhibits 1, 3-5, 8; Decision and Order at 13; *Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'g* 16 BLR 1-11 (1991); *Scott*, *supra*; *Dillon*, *supra*; *Fields*,

[3] The administrative law judge's findings pursuant to Section 718.204(c)(2) and (c)(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[4] A "qualifying" pulmonary function study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1).

supra; *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon. en banc*, 9 BLR 1-104 (1986). *King*, *supra*; *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *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 when they are supported by substantial evidence. *See Clark, supra*; *Anderson, supra*. Consequently, we affirm the administrative law judge's findings that the newly submitted evidence is insufficient to establish total disability pursuant to 718.204(c). In light of the administrative law judge's error in evaluating the x-ray evidence, however, this case must be remanded for consideration pursuant to Section 718.202(a) and Section 725.309(d). *Williams*, *supra*; *Labelle Processing Co. v. Swarrow*, 72 F.3d 308 (3d Cir. 1995).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge