BRB No. 98-1512 BLA

JOSEPH L. PARKANSKY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
READING ANTHRACITE COMPANY, INCORPORATED	)	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 - Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, 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 - Denying Benefits (97-BLA-00860) of Administrative Law Judge Ainsworth H. Brown 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 more than twenty-six 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 2. The administrative law judge citing *Penn*

[1] Claimant filed his claim for benefits on July 30, 1996. Director's Exhibit 1.

Allegheny Coal Co. v. Williams, 111 F.3d 22, 21 BLR 2-104 (3d Cir. 1997), noted that he must evaluate and weigh all the evidence together in determining the existence of pneumoconiosis. After considering the x-ray and medical opinion evidence together, the administrative law judge concluded that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). 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 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 finding the evidence of record insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as he failed to properly weigh the evidence and provide a sufficient statement of his findings and adequate rationale for his conclusions as required by the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(a), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). Claimant contends that there are twenty readings of three x-rays, dated August 8, 1986, September 16, 1996 and February 6, 1997, and that ten of the x-rays were read negative and ten of the x-rays were read positive. Claimant notes that the August 8, 1986 x-ray was read positive by three B readers and board-certified radiologists and as negative by three B-readers and board-certified radiologists; the September 16, 1996 x-ray was read positive by three B-readers and board-certified radiologists, negative by four B-readers and board-certified radiologists, and as negative by a physician with no special radiological qualifications; the February 6, 1997 x-ray was read positive by three B-readers and board-certified radiologists, and as negative by three B-readers and board certified radiologists.

The administrative law judge noted the dates of the three x-rays and that there was an even division of positive and negative interpretations between equally qualified board-certified B-readers. The administrative law judge, however, found that inasmuch as some of

the employer's x-ray readers possessed the additional qualification of teaching at the Johns Hopkins Medical School, their negative interpretations were entitled to more weight. Decision and Order at 5. As claimant contends, however, at least one of his x-ray readers, Drs. Marshall, has also taught in the field of radiology, a factor the administrative law judge did not consider. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993).[2] Thus, this case must be remanded for the administrative law judge to consider the qualifications of all the physicians and provide a sufficient statement of findings and adequate rational for his conclusions as required under the APA. *See Wojtowicz v. Duquesne Light Co.*,12 BLR 1-162 (1989). We, therefore, vacate the administrative law judge's finding regarding the x-ray evidence and remand the case to the administrative law judge to reconsider the x-ray evidence of record in light of all the readers' qualifications.[3]

Claimant also contends that the administrative law judge erred in his weighing of the medical opinions of record. We disagree. The administrative law judge permissibly accorded more weight to the opinion of Dr. Levinson ,finding no pneumoconiosis, than to the opinion of Dr. Kraynak, diagnosing pneumoconiosis, because he found it better documented, better supported by claimant's medical records, and because of Dr. Levinson's superior qualifications. *Scott v. Mason Coal Co.*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995), *rev'g on other grounds*, 14 BLR 1-37 (1990)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Further, 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, 12 BLR 2-12 (3d Cir. 1997); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). We therefore affirm the administrative law judge's findings regarding the medical opinion evidence. However, inasmuch as the administrative law judge's error in his evaluation of the x-ray evidence may affect his consideration of the evidence as a whole, *see Williams*, this case must be remanded for reconsideration of all the

[2] Dr. Marshall's Curriculum Vitae indicates that he has served as an Associate Clinical Professor of Radiology at the University of Louisville and University of Kentucky College of Medicine. Claimant's Exhibit 5.

[3] The existence or pneumoconiosis cannot be established under Sections 718.202(a)(2) and (a)(3) in this case. 20 C.F.R. §718.202(a)(2), (3).

relevant evidence as to the existence of pneumoconiosis at Section 718.202(a).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part, vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion. If on remand, the administrative law judge finds that the existence of pneumoconiosis has been established pursuant to Section 718.202(a), he is instructed to consider the evidence pursuant to Sections 718.203 and 718.204.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge