

BRB No. 04-0368 BLA

DOUGLAS C. COUCH )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 IKERD BANDY COMPANY, )  
 INCORPORATED )  
 ) DATE ISSUED: 12/29/2004  
 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 Alice M. Craft,  
Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for  
claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for  
employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-5381) of  
Administrative Law Judge Alice M. Craft 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). After crediting claimant with twenty-four years of coal mine  
employment, the administrative law judge considered this claim, which was filed on  
February 14, 2001, pursuant to the applicable regulations at 20 C.F.R. Part 718. The  
administrative law judge found that claimant failed to establish the existence of  
pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge

also found that, assuming *arguendo* that claimant had established the existence of pneumoconiosis, he failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, she denied benefits. On appeal, claimant challenges the administrative law judge's findings under Sections 718.202(a)(1) and (a)(4), and 718.204(b)(2)(iv). Employer responds in support of the decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not intend to participate in the proceedings on appeal.<sup>1</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In challenging the administrative law judge's weighing of the x-ray evidence of record under Section 718.202(a)(1), claimant argues that the administrative law judge erred in finding that the negative x-ray interpretations of record outweigh Dr. Hussain's 1/1 positive reading of the April 18, 2001 x-ray, and Dr. Baker's 1/0 positive reading of the March 24, 2001 film. Claimant argues that the administrative law judge improperly relied on the qualifications of the physicians submitting the negative interpretations, and the numerical superiority of the negative readings. Claimant's contention is without merit. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge must consider the quantity of the evidence in light of the difference in qualifications of the readers. *See Staton v. Norfolk & Western Railroad Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). In this case, the administrative law judge properly found that Dr. Hussain's positive reading of the April 18, 2001 x-ray was outweighed by the negative readings of the film submitted by Drs. West and Halbert, since Drs. West and Halbert are B readers and Board-certified

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<sup>1</sup>We affirm, as unchallenged on appeal, the administrative law judge's finding of twenty-four years of coal mine employment, and findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (a)(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3, 8.

radiologists, while Dr. Hussain possesses neither qualification. *See Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; Decision and Order at 9; Director's Exhibit 8; Employer's Exhibits 1, 2. The administrative law judge also properly found that Dr. Baker's positive reading of the March 24, 2001 film was outweighed by Dr. Barrett's negative reading of the film because while Dr. Baker is a B reader, Dr. Barrett is a B reader and Board-certified radiologist. *See Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; Decision and Order at 9; Director's Exhibit 9; Employer's Exhibit 3. Furthermore, the administrative law judge correctly found that the remaining x-ray reading of record, Dr. Dahhan's interpretation of a film dated December 18, 2001, is negative for the disease. Decision and Order at 9; Director's Exhibit 10. Because it is supported by substantial evidence and is in accordance with law, we affirm the administrative law judge's finding that the x-ray evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).<sup>2</sup> *See Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); Decision and Order at 9; Director's Exhibits 8-10; Employer's Exhibits 1-3.

With regard to the medical opinion evidence under Section 718.202(a)(4), claimant contends that the administrative law judge erred in rejecting the medical opinions of Drs. Baker and Hussain. Claimant argues that the administrative law judge erred in discounting the opinions of the two physicians on the ground that each doctor based his opinion on a positive x-ray reading which conflicted with the administrative law judge's determination that the weight of the x-ray evidence was negative. Claimant suggests that the administrative law judge thereby improperly substituted his opinion for those of Drs. Baker and Hussain, and asserts that it was error for the administrative law judge not to find the opinions to be reasoned and documented in view of the fact that each of doctors based his diagnosis of pneumoconiosis not only upon a positive x-ray reading, but also upon a physical examination, pulmonary function study, arterial blood gas study, and medical and work histories. Claimant also contends that Dr. Hussain's opinion should have been credited because the doctor is Board-certified in internal medicine and pulmonary disease medicine. Claimant's contentions lack merit.

The administrative law judge considered the three medical opinions of record relevant to the issue of the existence of pneumoconiosis under Section 718.202(a)(4) – *i.e.*, the opinions of Drs. Baker and Hussain, and the contrary opinion of Dr. Dahhan.

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<sup>2</sup>Claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for his contention, however, and the Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 4. Thus, we reject claimant's suggestion.

Decision and Order at 9-10; Director's Exhibits 8-10; Employer's Exhibit 4. Dr. Baker examined claimant on March 24, 2001, and diagnosed clinical pneumoconiosis based on his 1/0 x-ray reading and claimant's twenty-four years of coal dust exposure. Director's Exhibit 9. Dr. Hussain examined claimant on April 18, 2001, and likewise diagnosed clinical pneumoconiosis, based on his 1/1 reading of the April 18, 2001 film and claimant's twenty-four years of coal dust exposure. Director's Exhibit 8. In contrast, Dr. Dahhan, who examined claimant on December 18, 2001, concluded that claimant does not have pneumoconiosis, based on his 0/0 reading of the December 18, 2001 x-ray, and upon the results of the objective studies he administered, which he concluded were "normal." Director's Exhibit 10.

Contrary to claimant's contention, the administrative law judge properly discounted the opinions of Drs. Baker and Hussain because each doctor based his opinion on a positive reading of the film he administered, films which were reread as negative by physicians with superior radiological qualifications, as discussed *supra*. *Winters v. Director, OWCP*, 6 BLR 1-877 (1984); Decision and Order at 10; Director's Exhibits 8-10. Furthermore, the administrative law judge properly accorded greater weight to Dr. Dahhan's opinion on the ground that Dr. Dahhan's reasoning in support of his opinion that claimant does not have pneumoconiosis is better supported by the objective evidence of record, *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985), and in light of Dr. Dahhan's excellent credentials in the field of pulmonary medicine.<sup>3</sup> *DeFore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988); Decision and Order at 10; Director's Exhibit 10. We affirm, therefore, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(4).

Because we affirm the administrative law judge's determination that claimant did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4), a requisite element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits. *See Trent*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2. We need not address, therefore, claimant's contentions with regard to total disability under Section 718.204(b).

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<sup>3</sup>Dr. Dahhan is Board-certified in internal medicine and pulmonary medicine. Director's Exhibit 10. Dr. Hussain is similarly Board-certified in internal medicine and pulmonary medicine. Director's Exhibit 8. To the extent that the administrative law judge erred in not discussing whether Dr. Hussain's opinion was entitled to greater weight based on his credentials, any such error is harmless in light of the administrative law judge's proper alternative bases for according determinative weight to Dr. Dahhan's opinion. *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge