

BRB No. 05-0652 BLA

JACK R. FRANCISCO )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 STRAIGHT CREEK COAL RESOURCES )  
 )  
 and )  
 )  
 HORIZON NATURAL RESOURCES ) DATE ISSUED: 12/20/2005  
 )  
 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 Denying Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

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

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

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6526) 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). In a Decision and Order dated April 7, 2005, the administrative law judge credited the miner with twenty-five years of coal mine employment,<sup>1</sup> and found that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) and failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), (c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in her analysis of the x-ray and medical opinion evidence relevant to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4), and erred in her evaluation of the medical opinion evidence relevant to the issue of total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a limited response to claimant's appeal.<sup>2</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'Keefe 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 a finding of

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<sup>1</sup> 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*).

<sup>2</sup> The administrative law judge's evidentiary rulings pursuant to 20 C.F.R. §725.414, her finding of twenty-five years of coal mine employment and her findings that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) or (3), and further failed to establish the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(i)-(iii), are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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).

Claimant asserts that the administrative law judge erred in relying almost solely on the qualifications of the interpreting physicians and the numerical superiority of the x-ray interpretations in evaluating the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). Claimant's Brief at 3. We disagree. 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 seven readings of four x-rays.<sup>3</sup> Decision and Order at 5-6. A July 18, 2002 x-ray was read once as negative by Dr. Dahhan, a B-reader, and, thus, was found to be negative by the administrative law judge. Director's Exhibit 13; Decision and Order at 12. An August 12, 2002 x-ray was read once as positive by Dr. Simpao, a physician with no specialized qualifications for the reading of x-rays, and once as negative by Dr. Kendall, a dually qualified B-reader and Board-certified radiologist. Director's Exhibits 9, 21. The administrative law judge permissibly found this x-ray to be negative based on Dr. Kendall's superior qualifications. *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6<sup>th</sup> Cir. 1995); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon.*); Decision and Order at 12. In addition, a November 23, 2002 x-ray was read once as positive by Dr. Baker, a B-reader, and once as negative by Dr. Kendall, a dually qualified B-reader and Board-certified radiologist. Director's Exhibit 14; Employer's Exhibit 1. The administrative law judge permissibly found this x-ray to be negative based on Dr. Kendall's superior qualifications. *Staton*, 65 F.3d at 59, 19 BLR at 2-279; *Cranor*, 22 BLR at 1-7; Decision and Order at 12. Finally, a February 17, 2004 x-ray was read once as negative by Dr. Dahhan, a B-reader, and once as positive by Dr. Alexander, a dually qualified B-reader and Board-certified radiologist. Claimant's Exhibit 2; Employer's Exhibit 3. The administrative law judge permissibly found this x-ray to be positive based on Dr. Alexander's superior qualifications. *Staton*, 65 F.3d at 59, 19 BLR at 2-279; *Cranor*, 22 BLR at 1-7; Decision and Order at 12. Contrary to claimant's arguments, the administrative law judge properly considered both the quantity and the quality of the x-ray readings of record, and permissibly found that, notwithstanding the fact that the most recent x-ray of record was positive, when taken as a whole, the preponderance of negative readings by B-readers and dually qualified readers outweighs the positive x-ray reading of record. *Staton*, 65 F.3d at 59, 19 BLR at 2-279; *Cranor*, 22 BLR at 1-7; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); see *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6<sup>th</sup> Cir. 1993); Decision and Order at 12. Consequently, we affirm the administrative law judge's weighing of the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1) as it is supported by substantial

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<sup>3</sup> The record contains an additional reading for quality only (Quality 1), by Dr. Goldstein, of the August 12, 2002 x-ray. Director's Exhibit 12.

evidence. In addition, we reject claimant's comment that the administrative law judge "may have selectively analyzed" the x-ray evidence. Claimant's Brief at 4. Claimant has not provided any support for that assertion, nor does a review of the evidence and the administrative law judge's Decision and Order reveal selective analysis of the x-ray evidence.

Claimant also challenges the administrative law judge's evaluation of the medical opinion evidence on the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), specifically asserting that the administrative law judge erred in failing to accord greater weight to the opinion of Dr. Baker. We disagree.

In considering the medical opinion evidence, the administrative law judge properly noted that Dr. Baker diagnosed "coal workers' pneumoconiosis, category 1/0" based on a positive x-ray reading and coal dust exposure, noting that claimant had a long history of dust exposure and x-ray changes consistent with pneumoconiosis, and had no other condition which could account for these x-ray changes. Director's Exhibit 14. In addition, Dr. Baker diagnosed chronic bronchitis, "based on history," and stated that claimant had a Class I impairment, predominantly caused by his coal dust exposure. Finally, Dr. Baker stated that claimant should not be further exposed to dust, and, therefore, was one-hundred percent occupationally disabled for work in a coal mine or similar dusty environment. Director's Exhibit 14; Decision and Order at 9-10. Contrary to claimant's arguments, while acknowledging that Dr. Baker had treated claimant on several occasions, the administrative law judge permissibly accorded diminished probative weight to Dr. Baker's diagnosis of coal workers' pneumoconiosis because it "rests on his positive x-ray reading," which was subsequently re-read as negative by a more highly qualified reader, whose reading the administrative law judge had credited. *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Hutchens v. Director, OWCP*, 8 BLR 1- 16 (1985); see *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); Director's Exhibit 14; Decision and Order at 13. The administrative law judge further permissibly accorded little weight to Dr. Baker's additional diagnosis of chronic bronchitis because the physician relied only on claimant's "history" and did not persuasively attribute claimant's bronchitis to coal dust exposure in light of his normal findings on physical examination.<sup>4</sup> See *Odom*, 342 F.3d at 492, 22 BLR at 2-622; *Williams*, 338 F.3d at 501, 22 BLR at 2-625; *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6<sup>th</sup> Cir. 1989); *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6; *Clark v. Karst-Robbins Coal*

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<sup>4</sup> Dr. Baker stated that on physical examination, claimant's lungs were clear, with no rales or wheezes, and he exhibited no clubbing, cyanosis or edema of the extremities. Director's Exhibit 14.

*Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

Additionally, we reject claimant's assertion that, insofar as the administrative law judge characterized Dr. Simpao's diagnosis of pneumoconiosis as similarly "weakened" by his reliance on a positive x-ray which was subsequently re-read as negative by a more highly qualified reader, he is entitled to have the denial of benefits vacated, and the case remanded for the Director to provide him with a new pulmonary evaluation pursuant to 20 C.F.R. §725.406.<sup>5</sup> Claimant's Brief at 6. Contrary to claimant's arguments, the administrative law judge did not discredit Dr. Simpao's opinion on this basis, as she specifically acknowledged that Dr. Simpao's opinion was not based entirely on his x-ray reading, but was also based on examination findings and symptoms. *See Williams*, 338 F.3d at 514, 22 BLR at 2-649; Decision and Order at 14. Rather, the administrative law judge found Dr. Simpao's diagnosis of pneumoconiosis outweighed by the more highly qualified opinion of Dr. Dahhan,<sup>6</sup> that claimant does not suffer from coal workers' pneumoconiosis or any pulmonary impairment or disability causally related to coal dust exposure.<sup>7</sup> Director's Exhibits 12, 13; Decision and Order at 14. Thus, there is no merit to claimant's argument that the administrative law judge rejected Dr. Simpao's opinion as not credible.

It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility. *Crisp*, 866 F.2d at 185, 12 BLR at 2-129. Because the administrative law judge examined each medical opinion "in light of the

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<sup>5</sup> The Department of Labor has a statutory duty to provide a miner with a complete, credible pulmonary examination sufficient to constitute an opportunity to substantiate the claim. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 184 (1994).

<sup>6</sup> The administrative law judge specifically found that there is no evidence that Dr. Simpao is Board-certified in any area, while the record reflects that Dr. Dahhan is a Board-certified internist and pulmonologist. Claimant's Exhibit 1; Director's Exhibit 13; Decision and Order at 8, 9, 14 n.6.

<sup>7</sup> In addition, we note that in crediting the opinion of Dr. Dahhan, the administrative law judge properly considered that Dr. Dahhan's diagnosis was based in part on a negative x-ray which was subsequently reread as positive by a more highly qualified reader, but permissibly credited Dr. Dahhan's opinion as it was the most consistent with the remaining underlying documentation of record. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); Decision and Order at 14.

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 under 20 C.F.R. §718.202(a)(4), we affirm the administrative law judge’s finding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-120 (6th Cir. 2000). Consequently, we affirm the administrative law judge’s finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a).

Because we affirm herein the administrative law judge’s finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a), we need not address claimant’s challenge to the administrative law judge’s findings in determining that the evidence fails to establish the existence of a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(iv). A finding of entitlement to benefits is precluded in this case. *See Trent*, 11 BLR at 1-27.

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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JUDITH S. BOGGS  
Administrative Appeals Judge