BRB No. 05-0661 BLA

HENRY MATHIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JAMES RIVER COAL SERVICE COMPANY	)	
	)	
and	)	
	)	
MOUNTAIN CLAY, INCORPORATED	)	DATE ISSUED: 12/29/2005
	)	
Employer/Carrier-Respondents	)	
	)	
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer/carrier.

Michelle S. Gerdano (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-5813) of Administrative Law Judge Joseph E. Kane on a claim[1] 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 initially credited employer's stipulation that claimant worked in qualifying coal mine employment for twenty-two years. Adjudicating this claim pursuant to 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) and total respiratory disability due to pneumoconiosis pursuant to 718.204. Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis established by x-ray and medical opinion evidence under Section 718.202(a)(1) and (a)(4), and total respiratory disability under Section 718.204(b)(2)(iv). Claimant additionally contends that because the administrative law judge discredited the medical opinion of Dr. Simpao, a physician who examined him at the behest of the Department of Labor, the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a complete and credible pulmonary examination as required by Section 413(b) of the Act, 30 U.S.C. §923(b), to substantiate his claim. In response, employer urges affirmance of the denial of benefits. The Director has filed a response letter addressing arguments contained in claimant's brief, arguing that he satisfied his obligation to provide claimant with a complete, credible pulmonary evaluation as required by the Act because the administrative law judge did not conclude that Dr. Simpao's report was incomplete or incredible but rather, found it outweighed by the contrary evidence.[2]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

---

[1] Claimant, Henry Mathis, filed an application for benefits on July 6, 2001. Director's Exhibit 1.

[2] We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2)-(3), 718.204(b)(2)(i)-(iii) because these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 6 n.2, 8-9.

In challenging the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), claimant argues that the administrative law judge erred by placing substantial weight on the numerical superiority of the x-ray interpretations and by relying exclusively on the qualifications of the physicians providing the x-ray interpretations. Claimant contends that an administrative law judge is not required to defer to a physician with superior qualifications and may not selectively analyze the x-ray evidence.

Section 718.202(a)(1) provides, in pertinent part, "where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration *shall* be given to the radiological qualifications of the physicians interpreting such X-rays." 20 C.F.R. §718.202(a)(1) [emphasis added]. The administrative law judge considered the radiological expertise of the physicians and properly accorded greater weight to the negative interpretations of Drs. Poulos and Wiot, physicians who are Board-certified radiologists and B-readers, and permissibly accorded less weight to the positive interpretations rendered by Drs. Simpao and Baker, who possessed no demonstrated radiological expertise. 20 C.F.R. §718.202(a)(1); *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 7; Director's Exhibits 9, 16, 22, 23. The administrative law judge properly found that all four of the remaining x-ray interpretations of record were negative for the existence of pneumoconiosis. Decision and Order at 7; Director's Exhibit 24; Employer's Exhibits 2, 4, 7. Because the administrative law judge's determination to accord dispositive weight to the negative interpretations rendered by the physicians with superior, demonstrated radiological qualifications was rational and supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). In addition, we reject claimant's contention that the administrative law judge "may have selectively analyzed" the x-ray evidence inasmuch as 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 that he engaged in a selective analysis of the x-ray evidence. *See White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-4 (2004).

Claimant contends that because the administrative law judge discredited the opinion of Dr. Simpao, a physician who conducted claimant's pulmonary evaluation at the behest of the Department of Labor, on the basis that it was not well documented due to an erroneous x-ray interpretation, the Director has failed to provide him with a complete, credible pulmonary examination sufficient to substantiate his claim. The Director responds, asserting that he is only required to provide claimant with a complete and credible examination under the Act, not

necessarily a dispositive one. The Director avers further that the administrative law judge's conclusion that other physicians' opinions were more persuasive does not demonstrate that he abdicated his statutory obligation to provide claimant with a complete pulmonary evaluation. The Director's position has merit.

In assessing the credibility of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge found that the reliability of Dr. Simpao's diagnosis of pneumoconiosis was undermined because Dr. Simpao primarily relied on a positive chest x-ray and claimant's coal mine employment history in contrast to Drs. Broudy and Repsher, who rendered thorough reports that were based on chest x-ray films in addition to other objective medical evidence substantiating their conclusions. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003) (administrative law judge may not rely on physician's opinion that claimant has medical pneumoconiosis when physician bases this opinion entirely on x-ray evidence that administrative law judge previously discredited); *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (*en banc*); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); Decision and Order at 8. Finding that the probative value of Dr. Simpao's opinion was diminished, the administrative law judge determined that the opinions of Drs. Broudy and Repsher, physicians who possess superior pulmonary expertise, outweighed Dr. Simpao's opinion because Drs. Broudy and Repsher provided objective medical evidence supportive of their conclusion that claimant did not suffer from coal workers' pneumoconiosis, including negative chest x-ray readings, a negative CT scan report, normal pulmonary function studies, and normal blood gas studies. Hence, the administrative law judge's determination that the opinions of Drs. Broudy and Simpao, unlike that of Dr. Simpao, were better supported by their underlying documentation was rational. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Trumbo*, 17 BLR at 1-88-89; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 8. Although the administrative law judge determined that Dr. Simpao's opinion was outweighed by the contrary opinions of Drs. Broudy and Repsher, Dr. Simpao clearly rendered a credible opinion addressing all issues of entitlement since he diagnosed whether claimant suffered from the existence of pneumoconiosis and assessed the presence of a respiratory or pulmonary impairment. Director's Exhibit 9. Hence, we reject claimant's argument that the Director failed to provide claimant with a complete, credible pulmonary examination. *See Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1992), *alj decision summarily aff'd*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992)(court retained jurisdiction.); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Claimant similarly argues that the administrative law judge erred in discrediting the opinion of Dr. Baker because the administrative law judge may not discredit the opinion of a

physician whose report is based on a positive x-ray interpretation that is contrary to the administrative law judge's finding or because the record contains subsequent negative x-ray interpretations. The administrative law judge, within a reasonable exercise of his discretion, found that Dr. Baker's diagnosis of "coal workers' pneumoconiosis, category 1/0 on the basis of ILO classification" was undermined because Dr. Baker relied primarily on his positive x-ray reading and claimant's history of coal dust exposure in rendering his opinion while Drs. Broudy and Repsher relied on physical examinations, negative chest x-ray readings, normal CT scan results, non-qualifying pulmonary function studies, and non-qualifying arterial blood gas studies which supported their conclusions that claimant did not suffer from pneumoconiosis. Consequently, the administrative law judge determined that the opinions of Drs. Broudy and Repsher outweighed the contrary opinion of Dr. Baker because the opinions of Drs. Broudy and Repsher were more reliable, better documented, and better reasoned and, as such, he permissibly accorded their opinions dispositive weight. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003) (administrative law judge as factfinder should decide whether physician's report is sufficiently reasoned and documented); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Employer's Exhibits 4, 9, 10. We, therefore, reject claimant's argument. Accordingly, because claimant has not otherwise challenged the administrative law judge's crediting of the opinions of Drs. Broudy and Repsher that claimant does not suffer from pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Based on the foregoing, we affirm the administrative law judge's determination that claimant failed to affirmatively establish the existence of pneumoconiosis pursuant to Section 718.202(a) as this finding is rational, contains no reversible error, and is supported by substantial evidence. Inasmuch as claimant has failed to satisfy his burden to establish the existence of pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits. 20 C.F.R. §718.202(a); *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).[3]

[3] Claimant's failure to affirmatively establish the existence of pneumoconiosis, a requisite element of entitlement, obviates the need to address his argument regarding total respiratory disability at Section 718.204(b)(2)(iv). *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge