

BRB No. 07-0367 BLA

S.S.)
)
 Claimant-Petitioner)
)
 v.)
) DATE ISSUED: 12/17/2007
 NALLY & HAMILTON ENTERPRISES)
)
 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 Ralph A. Romano,
Administrative Law Judge, United States Department of Labor.

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

Emily Goldberg Kraft (Jonathan L. Snare, Acting Solicitor of Labor; Allen
H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy 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: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, appeals the Decision and Order-Denying Benefits (06-BLA-5276) of
Administrative Law Judge Ralph A. Romano rendered 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 credited
claimant with fourteen years of coal mine employment, based on the parties' stipulation,
and adjudicated this claim, filed on January 20, 2005, pursuant to the regulations

contained in 20 C.F.R. Part 718.¹ The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and total disability pursuant to 20 C.F.R. §718.204(b)(2), (c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge did not properly weigh the evidence relevant to Sections 718.202(a)(1) and 718.204(b)(2)(iv). Additionally, claimant argues that the Department of Labor failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. Employer did not respond to claimant's appeal. The Director, Office of Workers' Compensation Programs (the Director), responded and urges the Board to reject claimant's allegation that he was not provided with a complete pulmonary evaluation.

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 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).

Pursuant to Section 718.202(a)(1), the administrative law judge considered the x-ray evidence consisting of three interpretations of one x-ray. The administrative law judge found that the February 17, 2005 x-ray was read as positive for pneumoconiosis by Dr. Westerfield, a B reader, and read as negative for pneumoconiosis by Drs. Wiot and Spitz, who are both dually qualified Board-certified radiologists and B readers. Decision and Order at 4; Director's Exhibits 11, 13; Employer's Exhibit 4. Based on a qualitative analysis of the conflicting x-ray interpretations, the administrative law judge properly found that claimant did not establish the existence of pneumoconiosis by a preponderance of the x-ray evidence. Decision and Order at 7; *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314,

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because claimant's coal mine employment occurred in Kentucky. *Shupe v. Director OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 3.

17 BLR 2-77 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-4 (2004); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Consequently, claimant's arguments, that the administrative law judge improperly relied on the readers' credentials, merely relied on the numerical superiority of the negative x-ray interpretations, and "may have selectively analyzed" the readings, are without merit. Claimant's Brief at 3. We affirm, therefore, the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Because claimant does not challenge the administrative law judge's findings pursuant to Section 718.202(a)(2)-(4), they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Claimant also contends that the Director has failed to provide him with a complete, credible pulmonary evaluation sufficient to substantiate his claim, as required under the Act because the administrative law judge concluded that Dr. Simpao's report was unreasoned and not well documented. The Director asserts that Dr. Simpao validly diagnosed clinical pneumoconiosis based on a positive x-ray reading, but that his opinion was outweighed by contrary evidence. Director's Letter at 3-4. Consequently, the Director urges the Board to reject claimant's arguments. We agree.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lacks credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

Dr. Simpao conducted an examination and the full range of testing required by the regulations. Decision and Order at 6; Director's Exhibit 11; 20 C.F.R. §§718.101(a), 718.104, 725,406(a). On the issue of the existence of pneumoconiosis, the administrative law judge rationally discounted Dr. Simpao's diagnosis of pneumoconiosis because it was based largely on a positive x-ray reading that the administrative law judge found outweighed by negative readings of physicians with superior radiological credentials and because Dr. Simpao did not explain how other evidence supports his conclusions. Decision and Order at 7; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999)(explaining that "ALJ's [sic] may evaluate the relative merits of conflicting physicians' opinions and choose to credit one over the other"). The administrative law judge also acted within his discretion as fact-finder in determining that Dr. Simpao's opinion was outweighed by the "reasoned and well documented" contrary opinions of "highly qualified physicians," namely Drs. Broudy and Dahhan. *Id.* We

hold, therefore, that there is no merit to claimant's argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *Cf. Hodges*, 18 BLR at 1-93.

Because claimant failed to establish the existence of pneumoconiosis, a necessary element of entitlement in a miner's claim under Part 718, we affirm the administrative law judge's denial of benefits. *Anderson*, 12 BLR at 1-112. Consequently, we need not address claimant's arguments concerning the administrative law judge's finding that claimant did not establish that he is totally disabled.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge