BRB No. 99-0536 BLA

EUGENE TURNER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
L. B. J. ENERGY, INCORPORATED	)	DATE ISSUED:_____
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Lawrence P. Donnelly, Administrative Law Judge, United States Department of Labor.

Melissa Amos Young (Gentry, Locke, Rakes & Moore), Roanoke, Virginia, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order (98-BLA-0163) of Administrative Law Judge Lawrence P. Donnelly awarding benefits 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 instant case involves a claim filed

on January 7, 1997.[1] The administrative law judge, after crediting claimant with twenty-four years of coal mine employment, found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). The administrative law judge also found that claimant was entitled to a presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). After noting that the parties stipulated that claimant was totally disabled from a pulmonary or respiratory standpoint, the administrative law judge found that the evidence was sufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge awarded benefits. On appeal, employer challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1) and (a)(4) and 718.204(b). Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

[1]Claimant filed an earlier claim for benefits on December 15, 1993. Director's Exhibit 28. However, claimant subsequently requested that his claim be withdrawn. *Id.* On January 14, 1994, the Department of Labor approved claimant's request and allowed claimant to withdraw his claim. *Id.*

Employer contends that the administrative law judge erred in finding the x-ray evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Employer specifically argues that the administrative law judge mischaracterized the x-ray evidence of record. Employer notes that while the administrative law judge found that there was only one negative B reading of claimant's January 9, 1997 x-ray, the record contains three such negative interpretations. We agree. Although their interpretations are contained on a single x-ray report, three separate B readers interpreted claimant's January 9, 1997 x-ray as negative for pneumoconiosis. *See* Employer's Exhibit 4. However, under the facts of the instant case, we hold that the administrative law judge's error was harmless.[2] *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). In determining whether the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge properly accorded greater weight to the sole interpretation rendered by a physician with the dual qualifications of B reader and Board-certified radiologist. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). The administrative law judge noted that Dr. Cole, the only dually qualified physician of record, interpreted claimant's February 25, 1997 x-ray as positive for pneumoconiosis. Decision and Order at 6; Director's Exhibit 18. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Employer also contends that the administrative law judge erred in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Section 718.202(a), however, provides alternative methods by which a claimant may establish the existence of

[2]Employer also argues that the administrative law judge erred in not considering the fact that Dr. Hippensteel, in addition to being a B reader, is also Board-certified in Internal Medicine and Pulmonary Disease. An administrative law judge, in evaluating the relative weight of the x-ray readings, is not limited to considering the B reader and Board-certified reader status of the various physicians. However, while an administrative law judge is not barred from considering other factors relevant to the level of radiological competence, such as a professorship in the field of radiology, he is not obligated to do so. *See generally Worach v. Director, OWCP*, 17 BLR 1-105 (1993). Moreover, Dr. Hippensteel's Board-certification in Internal Medicine and Pulmonary Disease is not relevant to the level of his radiological competence. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991) (*en banc*).

pneumoconiosis. *See Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985). In light of our affirmance of the administrative law judge's finding that the x-ray evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), we decline to address the administrative law judge's errors, if any, in his consideration of the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4). *See Larioni*, *supra*.

Employer also contends that the administrative law judge erred in finding that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b).[3] In finding the evidence sufficient to establish that claimant's total disability was due to pneumoconiosis, the administrative law judge credited Dr. Robinette's opinion over that of Dr. Hippensteel. Decision and Order at 12-13. The administrative law judge credited Dr. Robinette's opinion because the administrative law judge found that the medical evidence did not definitely rule out the presence of restriction, did not show complete reversibility and showed a diffusion reduction.[4] *Id.* at 13. Dr. Robinette, however, did not indicate that these were the reasons that he attributed claimant's disability to his pneumoconiosis. *See* Claimant's Exhibit 1.

Moreover, Dr. Hippensteel, in addition to conducting his own examination, reviewed the medical evidence of record. Employer's Exhibit 1. Dr. Hippensteel noted that the lung volumes that suggested restriction to Dr. Robinette were likely attributable to a problem with his lung volume testing since claimant exhibited no evidence of restriction at the time of his own examination. *Id.* Moreover, while Dr. Robinette noted that claimant did not respond to bronchodilator therapy on January 9, 1997, Dr. Hippensteel noted that claimant's subsequent April 24, 1997 pulmonary function study showed a "significant improvement post bronchodilator." *Id.* Dr. Hippensteel also interpreted his own February 3, 1998 pulmonary function study as showing "severe obstruction with significant reversibility post bronchodilator." *Id.* Dr. Hippensteel further found that claimant's lung volumes showed air trapping with no evidence of restriction. *Id.* Dr. Hippensteel explained that the variable reversibility in claimant's impairment was against coal workers' pneumoconiosis as

[3]The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that a claimant must prove by a preponderance of the evidence that his pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment. *See Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

[4]In addition to diagnosing coal workers' pneumoconiosis, Dr. Robinette diagnosed very severe chronic obstructive lung disease without response to bronchodilator therapy with evidence of restriction present. Claimant's Exhibit 1.

a cause for his impairment, but was "quite in keeping with severe airways disease and chronic respiratory failure secondary to his continued heavy cigarette smoking habit." *Id.*

The Board has long held that the interpretation of the objective data is a medical determination for which an administrative law judge cannot substitute his own opinion. *See Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). In the instant case, the administrative law judge improperly substituted his opinion for that of Dr. Hippensteel. The administrative law judge also failed to adequately address whether Dr. Robinette's opinion is sufficiently reasoned. *See Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). We, therefore, vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b) and remand the case for further consideration.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge