BRB No. 04-0475 BLA

TROY L. SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SYCAMORE FUELS, INCORPORATED	)	DATE ISSUED: 02/15/2005
	)	
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 Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan, P.S.C.), South Williamson, Kentucky, for claimant.

Dorothea J. Clark (Jackson Kelly PLLC), Morgantown, West Virginia, 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-5106) of Administrative Law Judge Gerald M. Tierney 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 found that claimant established a coal mine employment history of twenty-five years. Decision and Order at 2. The administrative law judge further determined that the x-ray evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R §718.202(a)(1), and that the relevant medical opinion evidence failed to establish the presence of the disease pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 2-5. Citing, *Island Creek Coal Co. v. Compton*, 211 F.3d 303, 22 BLR 2-162 (4th Cir. 2000), the

administrative law judge determined, therefore, that claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement, and denied benefits. Decision and Order at 5.

On appeal, claimant generally contends that the administrative law judge erred in finding that the existence of pneumoconiosis was not established by impermissibly relying on the x-ray readings of Drs. Crisalli and Zaldivar. In response, employer contends that the administrative law judge did not rely on the x-ray readings of Drs. Crisalli and Zaldivar to find that the existence of pneumoconiosis was not established but properly found that the existence of pneumoconiosis was not established based on a review of all the relevant evidence and that the denial of benefits should, therefore, be affirmed. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.[1]

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).

In order to establish entitlement to benefits in a living miner's claim, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arises out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Failure to prove any one of these elements precludes entitlement. *Id*.

Claimant contends that in finding that the evidence of record did not establish the existence of pneumoconiosis, the administrative law judge impermissibly relied upon x-ray interpretations rendered by Drs. Crisalli and Zaldivar. *See* Hearing Transcript at 10-12. Rather, claimant contends the x-rays to be considered by the administrative law judge were those of Dr. Wiot and Dr. Scott, submitted on behalf of employer, and those of Dr. Bapuji Narra[2] and Dr. Ranavaya, submitted on behalf of claimant. Claimant does

[1] Claimant is unable to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (3) as there is no autopsy or biopsy evidence and there is no evidence of complicated pneumoconiosis in this living miner's claim filed subsequent to January 1, 1982. *See* Director's Exhibit 1; 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306.

[2] Dr. Bapuji Narra was referred to by the administrative law judge as Dr. Bapuji. Decision and Order at 3.

not otherwise challenge the administrative law judge's findings. In response, employer contends that while the administrative law judge considered the medical opinions of Drs. Crisalli and Zaldivar, which referenced their findings on x-ray, he never relied on the x-ray interpretations of either physician to find no radiographic evidence of pneumoconiosis. Decision and Order at 3. Further, employer contends that even if the administrative law judge had relied on those doctors' x-ray interpretations such error would be harmless as the preponderance of the x-ray and medical opinion evidence was negative for the existence of pneumoconiosis.

After considering the administrative law judge's Decision and Order, the arguments on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, held in *Compton*, 211 F.3d 303, 22 BLR 2-162, that the evidence relevant to the existence of pneumoconiosis, *e.g.*, x-rays and medical opinion evidence, must be weighed together in determining whether the existence of pneumoconiosis is established. In the instant case, the administrative law judge, citing *Compton*, 211 F.3d 303, 22 BLR 2-162, considered the x-ray evidence and the medical opinion evidence and found that the existence of pneumoconiosis was not established. In considering the x-ray evidence, the administrative law judge noted that both of the positive films submitted by claimant were reread negative by better qualified physicians. Decision and Order at 3.[3]

In finding that the medical opinion evidence of record did not support a finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge permissibly found that Dr. Ranavaya's opinion, finding the existence of pneumoconiosis, was entitled to little weight as the physician, relying on x-ray and claimant's history of coal mine employment, failed to provide adequate rationale for his conclusions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985). The administrative law judge permissibly accorded greater weight to the conclusions of Drs. Zaldivar and Crisalli, that claimant did not have pneumoconiosis, based on their superior qualifications as board-certified pulmonary specialists, Decision and Order at 5; *see*

[3] The May 29, 2001 x-ray read 1/0 by Dr. Ranavaya, a B-reader, was reread completely negative by Dr. Wiot a board-certified, B-reader. Director's Exhibit 18; Director's Exhibit 46. The June 4, 2003 x-ray read 1/1 by Dr. Bapuji [Narra] a Board eligible, B-reader, who reread completely negative by Dr. Scott, a Board-certified, B-reader. Claimant's Exhibits 1, 2; Employer's Exhibit 12.

Hicks, 138 F.3d 524, 21 BLR at 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269; *see also Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Moreover, the administrative law judge permissibly accorded greatest weight to the opinions of Drs. Zaldivar and Crisalli because these physicians had the most complete picture of claimant's health. *See Stark v. Director, OWCP*, 9 BLR 1-36 (1989); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). 718.202(a)(4).

Lastly, contrary to claimant's assertion, review of the physicians' opinions demonstrates that, as the administrative law judge found, both Dr. Crisalli and Dr. Zaldivar based their conclusions regarding the non-existence of pneumoconiosis on physical examinations and thorough review of relevant medical evidence and not mere review of x-rays. Decision and Order at 5; Director's Exhibit 45; Employer's Exhibits 1, 10, 11. Based on the foregoing, therefore, we affirm the administrative law judge's conclusion that claimant failed to demonstrate the existence of pneumoconiosis pursuant to Section 718.202(a). 20 C.F.R. §718.202(a)(1), (4); *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 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); *Compton*, 211 F.3d 303, 22 BLR 2-162.

Since the administrative law judge has considered the entirety of the relevant evidence of record and has provided credible reasons in support of his analysis of the weight and credibility of the evidence, we affirm the administrative law judge's findings regarding the existence of pneumoconiosis at Section 718.202(a), as they are supported by the record and are in compliance with *Compton*, 211 F.3d 303, 22 BLR 2-162. Because claimant did not establish the existence of pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, *see Trent*, 11 BLR at 1-27 (1987); *Perry*, 9 BLR at 1-5, we affirm the administrative law judge's denial of benefits.

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