

BRB No. 04-0501 BLA

ARCHIE R. PRICE)
)
 Claimant-Petitioner)
)
 v.)
)
 L & M TRUCKING COMPANY,)
 INCORPORATED) DATE ISSUED: 02/28/2005
)
 and)
)
 WASAU UNDERWRITERS)
 COMPANY)
)
 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 Modification and Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Archie R. Price, Elkhorn City, Kentucky, *pro se*.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Modification and Benefits (03-BLA-0099) of Administrative Law Judge Pamela Lakes Wood on a request for modification of the prior denial of benefits in a duplicate claim filed

September 12, 1995, 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).¹ Director's Exhibit 1. Claimant filed a request for modification subsequent to the Board's issuance of its Decision and Order in *Price v. L & M Trucking Co.*, BRB No. 98-1058 BLA (Apr. 27, 1999)(unpublished). Director's Exhibit 49. The Board, in *Price*, affirmed the findings by Administrative Law Judge J. Michael O'Neill that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4) (2000) and total respiratory or pulmonary disability at 20 C.F.R. §718.204(c)(1)-(4) (2000). *Id.* The Board further affirmed Judge O'Neill's finding that claimant failed to establish a material change in conditions since the prior denial pursuant to 20 C.F.R. §725.309(d) (2000), and affirmed the denial of benefits. *Id.* The Board denied claimant's motion for reconsideration by Order dated September 2, 1999. Director's Exhibit 54. Claimant thereafter filed the instant request for modification, and submitted new evidence. Director's Exhibit 55. Subsequent to further development of the evidence and the district director's denial of the claim, claimant requested a hearing, which was held before Administrative Law Judge Pamela Lakes Wood (the administrative law judge) on August 27, 2003.

In her Decision and Order dated February 24, 2004, which is the subject of the instant appeal, the administrative law judge noted that the prior denial of benefits was based on claimant's failure to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) (2000) and total respiratory or pulmonary disability at 20 C.F.R. §718.204(c) (2000). The administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also indicated that the evidence of record was insufficient to establish total disability under 20 C.F.R. §718.204, but that it was unnecessary for her to determine whether claimant established a ground for modification based on a finding of total disability. Specifically, the administrative law judge determined that a finding of entitlement was precluded, given her finding, on the merits of the claim, that a preponderance of the evidence of record failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202. Accordingly, benefits were denied.

Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a brief in response to claimant's appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, and that he is totally disabled due to a respiratory or pulmonary impairment arising out of coal mine employment. 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 establish any element of entitlement will preclude a finding of entitlement to benefits.

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we hold that substantial evidence supports the administrative law judge's finding on the merits of the claim that the evidence of record failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)–(4). The administrative law judge analyzed the quantitative and qualitative nature of the x-ray evidence. She properly found that the positive x-ray readings, rendered by physicians without special radiological qualifications, were outweighed by the numerous negative readings of record rendered by the better qualified readers, namely those physicians who were either B readers or Board-certified radiologists/B readers. *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, 17 BLR 2-77 (6th Cir. 1993); Decision and Order at 7-8. We affirm the administrative law judge's finding that the x-ray evidence of record failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) because it is supported by substantial evidence and is in accordance with law.

The administrative law judge next correctly determined that claimant could not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) as there was no biopsy evidence of record. The administrative law judge further correctly found that claimant could not establish the existence of pneumoconiosis by any presumption referred to in 20 C.F.R. §718.202(a)(3), as the record contained no evidence supportive of a finding of invocation of the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R. §718.304, and this was a living miner's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.305, 718.306. Decision and Order at 8. We therefore affirm the administrative law judge's findings at 20 C.F.R. §718.202(a)(2) and (a)(3).

The administrative law judge determined that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The

administrative law judge found that Dr. Joudeh, in his unsigned report dated October 18, 1999, merely noted a “history of Black Lung disease,” listed “Black Lung Disease” under “Impression,” and indicated “(1) Chest x-ray and report will be given to the patient tomorrow (2) Advised on continue [sic] current medications.” Director’s Exhibit 55. The administrative law judge found, within her discretion, that Dr. Joudeh did not discuss the basis for his diagnosis and thus found that his opinion was unreasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Decision and Order at 9.

The administrative law judge further properly determined that the diagnoses of coal workers’ pneumoconiosis rendered by both Drs. Sundaram and Hussain, *see* Director’s Exhibits 55, 76, were out of line with the preponderance of the x-ray evidence of record, which was negative, and were unsupported, as the physicians cited only their respective x-ray findings and claimant’s history of coal mine employment.² *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); Decision and Order at 10. The administrative law judge thereby permissibly found that Dr. Sundaram’s opinion, that claimant has pneumoconiosis, did not warrant additional weight based on his status as claimant’s treating physician. *Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-612 (6th Cir. 2003); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). The administrative law judge thus permissibly declined to credit Dr. Sundaram’s opinion that claimant had coal workers’ pneumoconiosis.

The administrative law judge properly accorded greater weight to the contrary opinions by Drs. Jarboe and Fino, based on their superior credentials as Board-certified internists with a sub-specialty in pulmonary disease, and on the administrative law judge’s finding that Dr. Jarboe’s opinion was the best documented opinion of record, as it was based on a review of “an extensive record.”³ *Riley v. National Mines Corp.*, 852 F.2d 197, 11 BLR

² By report dated October 23, 1999, Dr. Sundaram diagnosed coal workers’ pneumoconiosis and indicated that it was due to claimant’s twenty-two years of coal mine employment. Director’s Exhibit 55. Dr. Sundaram interpreted the x-ray dated October 19, 1999 as positive for pneumoconiosis 2/1 p/q. *Id.* By report dated July 24, 2002, Dr. Hussain diagnosed pneumoconiosis due to “dust exposure” and indicated that his diagnosis was based on “x-ray findings, exposure history.” Director’s Exhibit 76. Dr. Sundaram examined claimant in May of 1997 and, in his ensuing report, diagnosed an occupational lung disease caused by claimant’s coal mine employment. Claimant’s Exhibit 2.

³ By report dated November 29, 1999, Dr. Jarboe indicated that he “reviewed extensive medical records” and included a list of those records reviewed, dating from 1985 through 1999. Director’s Exhibit 63. Dr. Jarboe opined that there was insufficient medical

2-182 (6th Cir. 1988); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); Director's Exhibits 63, 74, 75; Decision and Order at 10. The administrative law judge also correctly noted that Drs. Broudy, Fritzhand, Wright, Vuskovich, and Mettu each opined that claimant did not have clinical or legal pneumoconiosis. See Director's Exhibits 12, 13, 41. We affirm, therefore, the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), as it is supported by substantial evidence and in accordance with law.

Because claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202, an essential element of entitlement under 20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits on the merits of the claim, as a finding of entitlement is precluded in this case. 20 C.F.R. §§725.309(d) (2000), 725.310 (2000); *Trent*, 11 BLR at 1-27. Given our affirmance of the administrative law judge's denial of benefits, based on claimant's failure to establish the existence of pneumoconiosis at 20 C.F.R. §718.202, we need not address the administrative law judge's findings at 20 C.F.R. §718.204. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

evidence upon which to make a diagnosis of coal workers' pneumoconiosis. *Id.* Dr. Jarboe's *curriculum vitae* reflects that he is Board-certified in internal medicine with a sub-specialty in pulmonary disease. *Id.* Dr. Jarboe discussed his findings at his August 13, 2002 deposition. Director's Exhibit 75. Dr. Fino examined claimant on August 29, 2002 and, by report dated October 9, 2002, opined that there was insufficient medical evidence to justify a diagnosis of clinical or legal pneumoconiosis. Director's Exhibit 78. The record indicates that Dr. Fino is Board-certified in internal medicine and pulmonary disease. *Id.*

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge