

BRB No. 04-0552 BLA

DURAN ADKINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ZION MINING COMPANY,)	DATE ISSUED: 02/17/2005
INCORPORATED)	
)	
and)	
)	
KENTUCKY COAL PRODUCERS SELF-)	
INSURANCE FUND)	
)	
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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Billy J. Moseley (Webster Law Offices), Pikeville, Kentucky, for claimant.

John T. Chafin (Chafin & Davis), Prestonsburg, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5239) of Administrative Law Judge Pamela Lakes Wood (the administrative law judge) on a subsequent 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 the newly submitted evidence of record was insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1)-(4), 718.203 and was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), (c). Accordingly, the administrative law judge denied benefits.

Claimant filed his first claim for benefits with the Department of Labor (DOL) on October 21, 1994. Director's Exhibit 1. The district director denied that claim on August 28, 1995 because the evidence failed to establish the existence of pneumoconiosis, that it arose out of coal mine employment, or that it caused total disability. *Id.* Claimant took no further action and the denial became final.

Claimant filed the instant, subsequent claim with DOL on April 20, 2001. Director's Exhibit 2. Following a hearing, the administrative law judge issued the Decision and Order denying benefits on appeal before us. The administrative law judge found that the newly submitted evidence, compared with the prior, relevant evidence, failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4). The administrative law judge also concluded that the evidence of record failed to establish total disability and, that claimant could not establish that pneumoconiosis arose out of coal mine employment, or that disability was due to pneumoconiosis, in light of his failure to establish the existence of pneumoconiosis. Decision and Order at 10. Accordingly, the administrative law judge concluded, a change in a condition of entitlement was not established pursuant to Section 725.309(d), and denied benefits on the subsequent claim for benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the newly submitted 1/1 x-ray reading from Dr. Hussain failed to establish that claimant's condition had worsened compared to the prior x-ray readings of 1/0 and erred, therefore, in finding that claimant failed to establish the existence of pneumoconiosis. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not file a response brief.

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 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 & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the arguments on appeal, the administrative law judge's Decision and Order, and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence, rational, and consistent with applicable law. It is, therefore, affirmed. In considering the new x-ray evidence, the administrative law judge found that the x-rays dated July 28, 2001 and February 7, 2003 were each read negative by a B-reader, while a third x-ray taken August 8, 2001 was read positive by Dr. Hussain, who lacked any special qualifications and negative by Dr. Halbert, a dually-qualified Board-certified, B-reader. The administrative law judge concluded, therefore, that the weight of the new x-ray evidence failed to establish the existence of pneumoconiosis. This was permissible. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon.*); Decision and Order at 7. Likewise, when compared to the previously submitted x-ray evidence, which was also interpreted negative by the better qualified physicians, the administrative law judge found that claimant had not shown a worsening of his condition. See *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001); *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994); Decision and Order at 7. We, therefore, reject claimant's challenge to the administrative law judge's finding pursuant to Section 718.202(a)(1), the only finding claimant has challenged,¹ and we affirm the administrative law judge's finding that the newly submitted x-ray evidence of record fails to establish the existence of pneumoconiosis at Section 718.202(a)(1). Because the administrative law judge properly found that claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, benefits are precluded on this claim. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

¹ Because claimant has not challenged the administrative law judge's findings that the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a)(2)-(4), those findings are affirmed. *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); see *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge