BRB No. 04-0574 BLA

CHESTER R. MATHIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ADENA FUELS, INCORPORATED	)	
	)	DATE ISSUED: 02/17/2005
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Appeal of the Decision and Order – Denying Claim of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, PSC), Hyden, Kentucky, for claimant.

Francesca L. Maggard (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Claim (03-BLA-5924) of Administrative Law Judge Daniel F. Solomon 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). In a Decision and Order dated July 19, 2002, the administrative law judge credited the miner with eight years of coal mine employment,[1] and found that the evidence was insufficient to establish the existence of

[1] The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits without reaching the issue of total disability. On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence relevant to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[2]

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'Keeffe 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 a finding of 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).

Claimant initially contends the administrative law judge erred in evaluating the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). We disagree. In finding the x-ray evidence insufficient to establish the existence of pneumoconiosis, the administrative law judge properly noted that the relevant x-ray evidence of record consists of four readings of two x-rays.[3] Decision and Order at 5-6. A November 9, 2001 x-ray was read once as positive by Dr. Simpao, a physician with no specialized qualifications for the reading of x-rays, and once as negative by Dr. Wheeler, a dually qualified B-reader and Board-certified radiologist. Director's Exhibit 9; Employer's Exhibit 1. In addition, a March 5, 2002 x-ray was read once as negative by Dr. Dahhan, a B-reader, and once as negative by Dr. Wheeler. Director's Exhibit 10. Contrary to claimant's arguments, the administrative law judge properly considered both the quantity and the quality of the x-

[2] The administrative law judge's findings of eight years of coal mine employment and his findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) or (3) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

[3] The November 9, 2001 x-ray was also read for quality only (Quality 2) by Dr. Sargent. Director's Exhibit 10.

ray readings of record, and permissibly accorded less weight to the sole positive x-ray reading by Dr. Simpao based on the fact that he possesses lesser qualifications than the other readers of record. *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon.*); *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); Decision and Order at 7. Consequently, we reject claimant's contentions that the administrative law judge improperly weighed the x-ray evidence of record, and affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Claimant also challenges the administrative law judge's evaluation of the medical opinion evidence on the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), specifically asserting that the administrative law judge erred in failing to accord greater weight to the opinion of Dr. Simpao. We disagree. In considering the medical opinion evidence, the administrative law judge properly found that Dr. Simpao was the only physician of record to find the existence of pneumoconiosis. Decision and Order at 8-9. The administrative law judge permissibly accorded little weight to Dr. Simpao's opinion as unreasoned, however, as it is based in part on a positive x-ray which was subsequently re-read as negative by a more highly qualified reader, and because the physician failed to explain how the underlying documentation supported his conclusion. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984); Decision and Order at 9.

It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility. *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). Because the administrative law judge examined each medical opinion "in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based," *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103, and explained whether the diagnoses contained therein constituted reasoned medical judgments under Section 718.202(a)(4), we affirm the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-120 (6th Cir. 2000). Consequently, we affirm the administrative law judge's finding that the existence of pneumoconiosis, an essential element of entitlement, was not established pursuant to 20 C.F.R. §718.202(a). We therefore affirm the administrative law judge's denial of benefits.

Accordingly, the administrative law judge's Decision and Order – Denying Claim 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