

BRB No. 07-0450 BLA

F. E. M. )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 BELL COUNTY COAL CORPORATION )  
 c/o JAMES RIVER COAL CORPORATION )  
 )  
 and )  
 ) DATE ISSUED: 02/29/2008  
 OLD REPUBLIC INSURANCE 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 Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Jeffrey S. Goldberg (Gregory F. Jacob, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (05-BLA-5792) of Administrative Law Judge Adele Higgins Odegard 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 credited claimant with 10.3 years of coal mine employment. She found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge further found that the evidence established that claimant was totally disabled by a pulmonary impairment pursuant to 20 C.F.R. §718.204(b), but since claimant did not establish the existence of pneumoconiosis, he could not establish that his total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant asserts that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation as required by the Act. Employer responds, urging affirmance of the denial of benefits. The Director responds, asserting that he met his obligation to provide a complete pulmonary evaluation.<sup>1</sup>

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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<sup>1</sup> The administrative law judge's length of coal mine employment finding, as well as her finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2)-(4), are not challenged on appeal. Therefore, these findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered four interpretations of two x-rays and accurately stated that none was positive for pneumoconiosis.<sup>2</sup> The administrative law judge therefore concluded, “Based upon multiple negative interpretations, including interpretations made by dually-qualified physicians, I find that the Claimant is unable to establish, by means of X-ray, that he has pneumoconiosis.” Decision and Order at 11. Substantial evidence supports the administrative law judge’s finding that there were no positive x-ray readings.<sup>3</sup> Consequently, claimant’s arguments that the administrative law judge improperly relied on the readers’ credentials, merely counted the negative readings, and “may have” selectively analyzed the x-ray evidence, lack merit. Claimant’s Brief at 3. We therefore affirm the administrative law judge’s finding pursuant to 20 C.F.R. §718.202(a)(1).

This is the extent of claimant’s assertions regarding the administrative law judge’s findings pursuant to Section 718.202(a). We therefore affirm the administrative law judge’s finding that the evidence did not establish the existence of pneumoconiosis pursuant to Section 718.202(a). Because claimant did not establish the existence of pneumoconiosis, an essential element of entitlement pursuant to Part 718, we affirm the administrative law judge’s denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

Finally, claimant asserts that because the administrative law judge noted that Dr. Baker’s opinion as to the existence of pneumoconiosis was conclusory, the Director failed to provide claimant with a complete, credible pulmonary evaluation. Claimant’s Brief at 4. The Director responds that he is required to provide a complete evaluation, not a dispositive one, and he notes that the administrative law judge found Dr. Baker’s opinion to be well-reasoned and accorded it significant weight in determining that claimant did not establish the existence of pneumoconiosis. The Director therefore concludes that he provided claimant with a complete pulmonary evaluation.

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<sup>2</sup> Dr. Poulos, a B reader and Board-certified radiologist, and Dr. Baker, who, at the time he interpreted claimant’s x-ray, lacked radiological credentials, read the September 19, 2001 x-ray as negative for pneumoconiosis. Decision and Order at 10 n.14; Director’s Exhibits 14, 35 at 96. Similarly, both Dr. Dahhan, a B reader, and Dr. Kendall, a B reader and Board-certified radiologist, read the September 10, 2002 x-ray as negative for pneumoconiosis. Director’s Exhibit 35 at 165, 166.

<sup>3</sup> As the administrative law judge noted, the record contains additional x-ray interpretations. The administrative law judge explained that she “did not consider these interpretations because neither party proffered them.” Decision and Order at 10, n.12. This determination has not been challenged on appeal.

The Act requires that “[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.” 30 U.S.C. §923(b); *see also Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). The regulations provide that a complete pulmonary evaluation “includes a report of physical examination, a pulmonary function study, a chest roentgenogram and, unless medically contraindicated, a blood gas study.” 20 C.F.R. §725.406(a).

The record reflects that Dr. Baker conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. Director’s Exhibits 14, 35; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). The administrative law judge noted that although Dr. Baker’s initial medical report was “conclusory” as to the existence of pneumoconiosis, Dr. Baker later “expanded on his conclusion” regarding the etiology of claimant’s lung disease in a supplemental report that he provided at the request of the district director. Director’s Exhibit 35 at 3-5. Specifically, the administrative law judge considered Dr. Baker’s supplemental opinion that claimant has obstructive lung disease, to which “[a] significant contribution” by coal mine dust exposure can neither “be ruled out nor can it be ruled in due to the differential degree of smoking compared to his coal dust exposure.” Director’s Exhibit 35 at 3. The administrative law judge permissibly found Dr. Baker’s opinion to be well-reasoned, and he accorded it significant weight in finding that it did not establish that coal dust exposure played a significant role in claimant’s impairment. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); 20 C.F.R. §718.201(a)(2)(b). Based on the foregoing, we reject claimant’s argument that the Director failed to provide him with a complete pulmonary evaluation. *Cf. Hodges*, 18 BLR at 1-89-90.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge