BRB No. 98-0640 BLA

ROGER DEAN JENNINGS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MARTIN COUNTY COAL CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
UNDERWRITERS SAFETY & CLAIMS	)	
	)	
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 of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

John C. Collins (Collins & Allen), Salyersville, Kentucky, for claimant.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0403) of Administrative Law Judge Daniel J. Roketenetz denying benefits 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 twenty-three years of coal mine employment and adjudicated this claim

pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate 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 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).

[1]Inasmuch as the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §718.202(a)(1)-(3) are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the relevant medical opinions of record.[2] Whereas Drs. Amerson, Myers and Sundaram opined that claimant suffers from pneumoconiosis, Director's Exhibits 19, 20; Claimant's Exhibit 1, Drs. Dahhan, Fino, Fritzhand, Iosif and Wright opined that claimant does not suffer from pneumoconiosis, Director's Exhibit 43; Employer's Exhibits 4, 5, 7, 8.[3] The administrative law judge properly accorded greater weight to the opinions of Drs. Dahhan, Fino, Fritzhand, Iosif and Wright than to the contrary opinions of Drs. Myers and Sundaram because the administrative law judge found their opinions to be better reasoned.[4] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).[5] Further, the administrative law judge properly accorded greater weight to

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[2]The administrative law judge rationally determined that "[t]he two reports of Dr. Rapier dated October 29, 1992, and May 2, 1996, as well as the report of Dr. Potter dated October 18, 1993, [which are with regard to claimant's persistent neck and back pain] are of no relevance to a determination of benefits under the Act." Decision and Order at 10; *see Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

[3]The administrative law judge stated that "[t]he record also contains hospital records from a number of stays by the Claimant from 1979 to 1996." Decision and Order at 9. The administrative law judge acted within his discretion in finding that although "[t]hese records frequently mention chronic obstructive lung disease in the history sections and also include a stray reference to black lung..., the mere recitation of these conditions, in the absence of any definitive diagnosis or reasoning, cannot support a finding of pneumoconiosis." *Id*. at 9-10; *see Perry, supra*.

[4]The administrative law judge observed that Drs. Dahhan, Fino, Fritzhand, Iosif and Wright "specifically stated the basis for their [diagnoses] and the reasoning supporting [them]." Decision and Order at 10. In contrast, the administrative law judge observed that Drs. Myers and Sundaram "failed to provide an adequate rationale for their diagnoses in the absence of their positive x-ray interpretations." *Id*.

[5]The administrative law judge stated that "every medical opinion which includes a diagnosis of pneumoconiosis is based, at least in part, on a positive interpretation of the Claimant's chest x-ray." Decision and Order at 10. The administrative law judge also noted correctly, however, that although "the

the opinions of Drs. Dahhan, Fino, Fritzhand, Iosif and Wright than to the contrary opinions of Drs. Amerson, Myers and Sundaram based upon their superior qualifications.[6] *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, we reject claimant's assertion that the administrative law judge erred by discounting the opinions of Drs. Amerson, Myers and Sundaram.

Claimant also asserts that the administrative law judge should have accorded determinative weight to Dr. Amerson's opinion due to his status as claimant's treating physician. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that the opinions of treating physicians are entitled to greater weight than those of nontreating physicians. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). The Court has also indicated, however, that this principle does not alter the administrative law judge's duty, as fact-finder, to evaluate the credibility of the treating physician's opinion. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). In the present case, the administrative law judge acknowledged Dr. Amerson's status, but rationally found that Dr. Amerson's opinion was insufficient to establish the existence of pneumoconiosis, as the preponderance of the medical opinion evidence, particularly that of the more highly qualified physicians, "is contrary to that generated by Dr. Amerson." Decision and Order at 10; *see Clark, supra*; *see also Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986). The administrative law judge also acted within his discretion in according little weight to Dr. Amerson's diagnosis of pneumoconiosis on the ground that the contrary opinions were better supported by

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preponderance of the radiographic evidence fails to establish that the Claimant suffers from coal workers' pneumoconiosis[,]..[t]he fact that these physicians relied on this positive x-ray, however, does not necessarily discredit their reports merely because the record contains a preponderance of negative x-rays." *Id*.; *see Church v. Eastern Associated Coal Co.*, 20 BLR 1-8 (1996).

[6]The administrative law judge stated that "Drs. Dahhan, Fino and Iosif submitted credentials to the record which were superior to all physicians of record." Decision and Order at 11. The administrative law judge observed that "Dr. Dahhan is Board-certified in internal and pulmonary medicines." *Id*. at 8. The administrative law judge also observed that "Dr. Fino is Board-certified in internal medicine and the subspecialty of pulmonary disease." *Id*. at 9. Further, the administrative law judge observed that "Dr. Iosif is Board-certified in internal medicine and pulmonary disease." *Id*. Dr. Amerson is Board-certified in family practice and pain management. Claimant's Exhibit 1. The credentials of Drs. Myers and Sundaram are not contained in the record.

the objective evidence of record.[7] Decision and Order at 11; *see Wetzel, supra*; *Lucostic, supra*. Thus, we reject claimant's assertion that the administrative law judge should have accorded determinative weight to Dr. Amerson's opinion because Dr. Amerson was claimant's treating physician. Moreover, we hold that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). *See O'Keeffe, supra*.

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

[7]The administrative law judge stated that "Dr. Amerson, in addition to relying on his positive x-ray interpretation, also noted abnormal pulmonary function and arterial blood gas test results." Decision and Order at 10. However, the administrative law judge observed that "Dr. Dahhan called into question Dr. Amerson's interpretation of these results." *Id*. As previously noted, the administrative law judge rationally found that the qualifications of Dr. Dahhan are superior to the qualifications of Dr. Amerson.

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge