

BRB No. 04-0419 BLA

RICK NAPIER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY	)	DATE ISSUED: 01/13/2005
	)	
Respondent	)	
	)	
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 Stuart A. Levin,  
Administrative Law Judge, United States Department of Labor.

John Hunt Morgan, Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd, PLLC), Washington, D.C., for  
employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (2003-BLA-5294) of  
Administrative Law Judge Stuart A. Levin 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). The administrative law judge found, and the  
parties stipulated to, seventeen years of coal mine employment and based on the date of  
filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 2.  
The administrative law judge found that the evidence was insufficient to establish the  
existence of pneumoconiosis or total disability pursuant to Sections 718.202(a) and  
718.204(b). Accordingly, benefits were denied.

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).

On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs has not filed a brief in this appeal.

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any 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*).

Claimant contends that the administrative law judge erred in relying almost solely on the qualifications of the physicians who interpreted the x-rays to be negative and erred in placing substantial weight on the numerical superiority of the negative x-ray evidence. Contrary to claimant's contention, the administrative law judge properly accorded greater weight to the numerical superiority of the negative readings by the better qualified physicians, including those of a B reader and board-certified, B readers, than to the single positive reading by a physician whose qualifications were unknown. Decision and Order at 4; Director's Exhibits 9, 20, 24; Employer's Exhibit 1; 20 C.F.R. §718.202(a)(1); *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). Accordingly, we reject claimant's contention and affirm the administrative law judge's finding that the existence of pneumoconiosis was not established by x-ray evidence.

Claimant also contends that the administrative law judge erred in his weighing of Dr. Simpao's opinion. Specifically, claimant contends that Dr. Simpao's diagnosis of coal worker's pneumoconiosis category 1/0 and a mild pulmonary impairment due to coal dust exposure was sufficient to establish the existence of pneumoconiosis and that that diagnosis was based on the results of a thorough physical examination, review of medical and work histories and the results of a pulmonary function study and a blood gas study, in addition to a positive chest x-ray. Director's Exhibit 9. Because Dr. Simpao failed to discuss the normal results he found on a pulmonary function and a blood gas study and relied on a positive x-ray which was subsequently reread negative by a more highly qualified physician, the administrative law judge permissibly rejected Dr. Simpao's

finding as unreasoned. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983) (explaining that in making credibility determinations, the ALJ “must examine the validity of the reasoning of a medical opinion in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based”) (footnote omitted); *Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991) (a fact-finder “may disregard a medical opinion that does not adequately explain the basis for its conclusion”); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). We, therefore, affirm the administrative law judge’s finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (4). Because we affirm the administrative law judge’s finding that the evidence was insufficient to establish the existence of pneumoconiosis, an essential element of entitlement, we need not address claimant’s contentions regarding total disability. *Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Accordingly, the administrative law judge’s Decision and Order - Denying Benefits 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