

BRB No. 04-0451 BLA

RUSSELL MEECE)
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 Claimant-Petitioner)
)
 v.)
)
 IKERD BANDY COMPANY,) DATE ISSUED: 01/13/2005
 INCORPORATED)
)
 and)
)
 ZURICH AMERICAN INSURANCE)
 GROUP)
)
 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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (2003-BLA-5124) of Administrative Law Judge Daniel J. Roketenetz. 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, nineteen 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 4. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis or a totally disabling respiratory impairment pursuant to Sections 718.202(a) and 718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis and total disability. 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 first contends that the administrative law judge erred in his weighing of the x-ray evidence of record. Specifically, claimant contends that in finding that the x-ray evidence did not establish the existence of pneumoconiosis the administrative law judge erroneously "relied almost solely on the qualifications of the physicians" and placed "substantial weight on the numerical superiority of x-ray interpretations." Claimant's Brief at 3.

Contrary to claimant's contention, however, the administrative law judge properly accorded greater weight to the negative readings by better qualified physicians than to the positive readings of physicians who hold no special qualifications. Decision and Order at 6; 20 C.F.R. §718.202(a)(1); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1 (1999) (*en banc recon.*); *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). Further, claimant has failed to allege specific errors in support of his contention that the administrative law judge selectively analyzed the x-ray evidence. Accordingly, we affirm the administrative law judge's finding that the x-ray evidence has failed to establish the existence of pneumoconiosis at Section 718.202(a)(1). *See White v. New White Coal Co.*, 23 BLR 1-1 (2004).

Claimant next contends that the administrative law judge erred in his weighing of the medical opinions of record. Specifically, claimant contends that the opinions of Drs. Baker and Hussain are sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). The administrative law judge accorded little weight to the opinions of Drs. Baker and Hussain, however, because he concluded, after reviewing the

totality of their opinions, that they had based their diagnoses on a positive x-ray reading and claimant's history of dust exposure without providing other rationale for their diagnoses. Specifically, the administrative law judge stated that Dr. Baker failed "to state any other reason for his diagnosis of pneumoconiosis beyond the x-ray and exposure history" and that Dr. Hussain "failed to record the [c]laimant's coal mine employment history or provide any compelling rationale for his diagnosis of pneumoconiosis other than his positive chest x-ray reading and ... exposure history[.]" Decision and Order at 10; Director's Exhibits 10, 11. The administrative law judge further considered that the positive x-ray Dr. Baker relied on was subsequently reread as negative by a better qualified physician. See *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). Thus, contrary to claimant's contention, the administrative law judge rationally rejected the opinions of Drs. Baker and Hussain as unreasoned opinions. See *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *White*, 23 BLR 1-1; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); *King v. Consolidation Coal Co.*, 8 BLR 8 BLR 1-22 (1985); *Hopton v. United States Steep Corp.*, 7 BLR 1-12 (1984). We, therefore, affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). See *White*, 23 BLR 1-1. Because we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we need not address claimant's total disability arguments. *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.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge