BRB No. 04-0456 BLA

JOSEPH BERNARD HEDDINGS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BELTRAMI ENTERPRISES, INCORPORATED	)	DATE ISSUED: 01/27/2005
	)	
and	)	
	)	
LACKAWANNA CASUALTY COMPANY	)	
	)	
Employer/Carrier-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 Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Harry T. Coleman, Scranton, Pennsylvania, for claimant.

Maureen E. Herron (Marshall, Dennehey, Warner, Coleman & Goggin), Scranton, Pennsylvania, for employer.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6150) of Administrative Law Judge Ralph A. Romano 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 five years of coal mine employment,[1] as stipulated by the parties, and found that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202 and failed to establish total disability at 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical evidence relevant to the issues of the existence of pneumoconiosis and total pulmonary or respiratory disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(b)(2), respectively. Employer responds, urging affirmance of the denial of benefits.

The Director, Office of Workers' Compensation Programs (the Director), filed a response brief, alleging that the administrative law judge erred in admitting x-ray evidence which was proffered by employer in excess of the evidentiary limitations set forth at 20 C.F.R §725.414, further erred in his evaluation of the medical opinion evidence at 20 C.F.R. §718.202(a)(4), and committed additional errors when weighing all types of relevant evidence together as required by *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997), to determine whether claimant suffers from pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Director's Brief at 2-3. The Director, however, also maintains that these errors are harmless if the administrative law judge's finding that claimant failed to establish total disability at 20 C.F.R. §718.204(b), a requisite element of entitlement, is affirmed. Director's Brief at 3. Employer filed a reply to the Director's brief, arguing that as a party-in-interest, the Director lacks standing to raise the aforementioned objections.[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

[1] Because claimant's last coal mine employment occurred in Pennsylvania, this claim arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 3.

[2] The administrative law judge's finding that claimant had five years of coal mine employment is 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).

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 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).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we affirm the administrative law judge's denial of benefits based on claimant's failure to establish total pulmonary or respiratory disability at 20 C.F.R. §718.204(b). The administrative law judge properly found that the three pulmonary function studies and two blood gas studies of record all resulted in non-qualifying values. 20 C.F.R. §718.204(b)(2)(i), (ii); Director's Exhibit 8; Employer's Exhibits 3, 10; Decision and Order at 8. The administrative law judge further correctly noted that the record contains no medical evidence that shows that claimant suffers from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 8. Finally, the administrative law judge permissibly found unreasoned the sole medical opinion of record supportive of a finding of total disability, that of Dr. Bohn dated August 13, 2003, because the physician neither identified the objective studies he asserted supported his conclusion nor adequately explained how the underlying documentation supported his diagnosis. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985). It is the administrative law judge's job to weigh the medical evidence, consider the qualifications of the competing physicians and the quality of their respective reasoning, and draw his or her own inferences. *See Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-467, 2-481 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986). Based on the foregoing, because we affirm the administrative law judge's finding that the evidence failed to establish total disability at 20 C.F.R. §718.204(b), we affirm the denial of benefits.

Because we affirm herein the administrative law judge's denial of benefits based on the insufficiency of the record evidence to establish total disability at 20 C.F.R. §718.204(b), we need not address claimant's challenge to the administrative law judge's findings in determining that the evidence fails to establish the existence of

pneumoconiosis at 20 C.F.R. §718.202. A finding of entitlement to benefits is precluded in this case.[3]

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

[3] We reject employer's contention that the failure of the Director, Office of Workers' Compensation Programs (the Director), to object to the admission of employer's x-ray evidence before the administrative law judge constitutes a waiver of the issue of compliance with the evidentiary limitations of 20 C.F.R. §725.414. The regulation makes it plain that the limitations are mandatory, and as such, they are not subject to waiver: "Medical evidence in excess of the limitations contained in 20 C.F.R. §725.414 *shall not* be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1) (emphasis added). We further reject employer's assertion that the Director, as party-in-interest, lacks standing to allege that the administrative law judge committed errors in his administration of this claim. The Board has held that the Director has standing to ensure the proper enforcement and lawful administration of the Black Lung program. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994).