BRB No. 05-0675 BLA

TRACEY BEGLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 01/26/2006
	)	
	)	
Employer-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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), 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 (03-BLA-0207) of Administrative Law Judge Joseph E. Kane 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). Based on the date of filing, March 12, 2001, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and found that claimant established twelve years and three months of coal mine employment. The administrative law judge further determined that the medical evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in not finding the existence of pneumoconiosis and total disability established. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

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 by 30 U.S.C. §932(a); *O'Keeffe 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*).

Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge "need not defer to a doctor with superior qualifications" and "need not accept as conclusive the numerical superiority of x-ray interpretations." Claimant's Brief at 3. Claimant further suggests that the administrative law judge "may have" improperly selectively analyzed the x-ray evidence of record. Claimant's Brief at 3. We find no merit in these assertions. The administrative law judge rationally found that claimant had not established the presence of pneumoconiosis by a preponderance of the x-ray evidence as the administrative law judge considered the radiological qualifications of each reader, and the quality of each interpretation, and permissibly determined that the two positive readings of pneumoconiosis did not outweigh the greater number of negative readings by more qualified readers. Decision and Order - Denying Benefits at 4, 7; Employer's Exhibits 2, 7-10; Claimant's Exhibit 1; Director's Exhibits 10, 11; 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. 1995); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985).[1] Further, claimant points to no evidence which supports his suggestion that the administrative law judge selectively analyzed the x-ray

[1] Because the miner last worked in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 2.

evidence of record. *See Cox v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988); *White v. New White Coal Co.*, 23 BLR 1-1, 1-5 (2004). Accordingly, we affirm the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1).[2]

Claimant contends that the administrative should have found the existence of pneumoconiosis established based on the opinion of Dr. Baker diagnosing the presence of coal workers' pneumoconiosis and a pulmonary impairment due to coal mine employment and the opinion of Dr. Simpao, diagnosing the presence of coal workers' pneumoconiosis, as they were documented and reasoned opinions based on x-rays, physical examinations, objective test results, and medical and work histories. Claimant also asserts generally that an administrative law judge may not discredit the opinion of a physician whose report is based on a positive x-ray contrary to the administrative law judge's finding that the weight of the x-ray evidence is negative, may not discredit a report based on positive x-ray evidence merely because the record contains subsequent negative x-rays, and may not independently interpret medical tests.

In finding that the medical opinion evidence did not establish the existence of pneumoconiosis, the administrative law judge found that the opinions of Drs. Baker and Simpao, finding coal workers' pneumoconiosis, were outweighed by the opinions of Drs. Repsher and Dahhan, finding no pneumoconiosis and no pulmonary impairment related to coal mine employment. The administrative law judge found the opinions of Drs. Repsher and Dahhan more persuasive than the contrary opinions as they were better supported by the objective evidence of record, and were based on a more complete picture of the miner's health as they had reviewed the medical evidence of record and conducted carboxyhemoglobin testing which indicated a greater smoking history than claimant related. Decision and Order - Denying Benefits at 7-8; Employer's Exhibits 7, 9; Claimant's Exhibit 1; Director's Exhibit 7. This was rational. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-8 (1993); *Clark*, 12 BLR 1-149; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). We, therefore, affirm the administrative law judge's finding that claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

As we have affirmed the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section

[2] The administrative law judge's determination that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2),(3), is affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

718.202(a)(1)-(4), an essential element of entitlement, we must also affirm the denial of benefits. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1. We need not, therefore, address claimant's argument on total disability.

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