BRB No. 07-0392 BLA

J.C. Claimant-Petitioner v. CORNETT & WALDEN COAL COMPANY and LIBERTY MUTUAL INSURANCE COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 01/17/2008 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.

W. Barry Lewis (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer/carrier.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (05-BLA-5619) of Administrative Law Judge Joseph E. Kane 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). Claimant filed his claim on March 11, 2004.

Director's Exhibit 2. After crediting claimant with six years of coal mine employment, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge further found that, although claimant established that he is totally disabled pursuant to 20 C.F.R. §718.204(b), the issue of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c) was moot because pneumoconiosis had not been established. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4).[1] Moreover, claimant contends that the administrative law judge erred in finding that total disability was not established at 20 C.F.R. §718.204(b). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief.

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'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).

Pursuant to Section 718.202(a)(1), the administrative law judge considered three x-ray readings of record, all of which were negative for pneumoconiosis. Dr. Patel, a Board-certified radiologist and B reader, interpreted the June 1, 2004 x-ray as negative for pneumoconiosis. Director's Exhibit 18. Drs. Broudy and Dahhan, both B readers, interpreted the June 18, 2004 and July 27, 2004 x-rays, respectively, as negative for pneumoconiosis. Director's Exhibits 21, 42. The administrative law judge accurately found that none of the physicians interpreted the x-rays as positive for pneumoconiosis.

[1] The administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3) are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Decision and Order at 9; Director's Exhibits 18, 21, 42. Consequently, claimant's arguments that the administrative law judge improperly deferred to the numerical superiority of the x-ray readings by physicians with superior qualifications, and that he "may have 'selectively analyzed'" the readings, lack merit. Claimant's Brief at 3. We therefore affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Broudy, Dahhan, and Rasmussen. In a report dated June 18, 2004, Dr. Broudy opined that claimant did not have any chronic lung disease caused by the inhalation of coal mine dust, but rather had a totally disabling pulmonary impairment due to cigarette smoking. Director's Exhibit 21-4. Dr. Broudy based his opinion on claimant's clinical examination, coal mine employment history, normal blood gas study, negative chest x-ray, and pulmonary function study showing severe obstructive airway disease. Director's Exhibit 21-3,4. On August 3, 2004, Dr. Dahhan stated that there was insufficient objective data to diagnose coal workers' pneumoconiosis based on the obstructive abnormalities found on clinical examination, the negative reading for pneumoconiosis on chest x-ray, normal blood gas study at rest and exercise, and the finding of reversible airway obstruction on pulmonary function study. Director's Exhibit 42-4. Dr. Dahhan concluded that claimant's totally disabling pulmonary disability was due to his lengthy smoking habit and possibly to bronchial asthma. *Id.* Dr. Rasmussen diagnosed legal pneumoconiosis in his report dated June 1, 2004.[2] Director's Exhibit 18-32, 18-38. Dr. Rasmussen attributed claimant's impaired lung function to smoking, coal mine employment, and possibly asthma. *Id.* Dr. Rasmussen based his opinion on the clinical examination of claimant, coal mine employment and smoking histories, as well as a negative chest x-ray, normal blood gas study, and pulmonary function study indicating moderately severe, partially reversible, obstructive ventilatory impairment. *Id.*

The administrative law judge found that all three medical opinions were well-reasoned and well-documented. Decision and Order at 11. However, the administrative law judge found that claimant failed to demonstrate, by the preponderance of the medical opinion evidence, the existence of pneumoconiosis. *Id.* On appeal, claimant does not challenge the administrative law judge's specific determination that Dr. Rasmussen's opinion was well-reasoned but outweighed by the well-reasoned and well-documented opinions of Drs. Broudy and Dahhan. Instead, he argues inaccurately that the administrative law judge failed to find Dr. Rasmussen's opinion well-reasoned and that

[2] The record reflects that Dr. Rasmussen agreed with Drs. Broudy and Dahhan that a diagnosis of clinical coal workers' pneumoconiosis could not be made. Director's Exhibit 18-32.

he rejected it for several invalid reasons.[3] As the administrative law judge's unchallenged finding as to the preponderance of the evidence pursuant to Section 718.202(a)(4) is supported by substantial evidence, we affirm it. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994); *Cox v. Benefits Review Board*, 791 F.2d 445, 447, 9 BLR 2-46, 2-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-121 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 11; Director's Exhibits 18, 21, 42.

In light of our affirmance of the administrative law judge's finding that the evidence did not establish the existence of pneumoconiosis pursuant to Section 718.202(a), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27. Consequently, we need not address claimant's remaining contention regarding the administrative law judge's findings pursuant to Section 718.204(b).[4] *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[3] Claimant makes this argument by setting forth legal principles applicable to weighing medical opinion evidence and indicating that the administrative law judge violated these principles in weighing Dr. Rasmussen's opinion. Claimant's Brief at 5. Claimant suggests that the administrative law judge erred by discrediting Dr. Rasmussen's opinion because it was based on a positive x-ray interpretation which was contrary to the administrative law judge's weighing of the x-ray evidence, and because the record contained subsequent negative x-rays. Claimant suggests further that the administrative law judge substituted his opinion for that of a medical expert. Claimant's Brief at 5.

[4] In any event, as noted above, contrary to claimant's argument, the administrative law judge found that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b). Decision and Order at 11-13.

Accordingly, the administrative law judge's Decision and Order-Denying Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge