

BRB No. 97-0762 BLA

BOBBY SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
EASTERN COAL CORPORATION	)	
	)	
and	)	
	)	
THE PITTSTON COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

Before: BROWN, DOLDER, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0273) of Administrative Law Judge Daniel L. Leland denying benefits 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 sixteen years of coal mine employment, but found that the medical evidence failed to establish either the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R.

§§718.202(a), 718.204(c). Accordingly, he denied benefits.

On appeal, claimant generally challenges the administrative law judge's weighing of the x-ray readings pursuant to Section 718.202(a)(1). Claimant also alleges that the administrative law judge failed to consider properly the medical opinion of a treating physician pursuant to Sections 718.202(a)(4) and 718.204(c)(4). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.<sup>1</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. § 921(b)(3), as incorporated into the Act by 30 U.S.C. § 932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge erred by finding that the existence of pneumoconiosis was not established. Claimant's Brief at 1. The administrative law judge considered all twenty-seven readings of eight x-rays in the record. Decision and Order at 3. There were twenty-two negative readings and five positive readings. Director's Exhibits 15, 24-27, 39, 44-48; Employer's Exhibits 2, 3, 5, 6, 9, 10. Of the twenty-two negative readings, twenty were by physicians who are Board-certified radiologists, B-readers, or both, while three of the positive readings were by B-readers. Contrary to claimant's contention, the administrative law judge considered both the quantity and quality of the x-ray readings and permissibly relied on the weight of the negative readings by "physicians . . . qualified as both B-readers and [B]oard-certified radiologists," to find that, "the overwhelming majority of the better qualified physicians interpreted the [c]laimant's x-rays as negative for pneumoconiosis." Decision and Order at 7; see *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). Therefore, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), claimant asserts that the administrative law judge failed to accord sufficient weight to the opinion of claimant's treating physician, Dr. Vyas, whose diagnosis of pneumoconiosis, claimant argues, was supported by the opinions of Drs. Musgrave, Lafferty, Baker, and Sundaram. Claimant's Brief at 2.

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<sup>1</sup> We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2), (3). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In weighing the medical opinion evidence, an administrative law judge must consider a physician's status as a treating physician, *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993), but there is no *per se* rule that a treating physician's opinion must be accorded the greatest weight. See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995)(administrative law judge permissibly accorded less weight to treating physician's opinion found to be equivocal); *Berta v. Peabody Coal Co.*, 16 BLR 1-69 (1992). Here, the administrative law judge explicitly considered the treating status of Drs. Vyas and Sundaram, Decision and Order at 8; Director's Exhibits 16, 19, 45, but permissibly accorded greater weight to the diagnoses of Drs. Broudy, Fino, and Branscomb, based on the physicians' documented superior qualifications in internal and pulmonary medicine and because he found their medical opinions to be better reasoned and explained.<sup>2</sup> See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Further, the administrative law judge rationally accorded diminished weight to the opinions of Drs. Vyas, Sundaram, and Baker because they did not explain how they considered claimant's smoking history in diagnosing pneumoconiosis. See *Clark, supra*. In sum, the administrative law judge adequately considered Dr. Vyas' status as claimant's treating physician and permissibly declined to accord his opinion determinative weight. See *Griffith, supra*; *Tussey, supra*; *Berta, supra*. Therefore, we reject claimant's contention and affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).<sup>3</sup>

Because claimant has failed to establish the existence of pneumoconiosis, a necessary element of entitlement under Part 718, the denial of benefits is affirmed. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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<sup>2</sup> Review of the record indicates that Dr. Broudy examined and tested claimant, and that Drs. Fino and Branscomb reviewed the medical evidence of record. Director's Exhibit 48; Employer's Exhibits 1, 2, 7, 8.

<sup>3</sup> The administrative law judge correctly declined to weigh at Section 718.202(a)(4) the opinions of Drs. Musgrave and Lafferty, which addressed claimant's back problems only. Director's Exhibits 20, 40, 41.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

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JAMES F. BROWN  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge