BRB No. 93-2075 BLA

RONNIE MOLLETT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

Ronnie Mollett, Tomahawk, Kentucky, *pro se*.

Rodger Pitcairn (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (90-BLA-0328) of Administrative Law Judge J. Michael O'Neill 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 eight years of coal mine employment and considered the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c) and, accordingly, denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance of the administrative

law judge's Decision and Order.[1]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co*., 12 BLR 1-176 (1989). 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

[1] We affirm as unchallenged on appeal and not adverse to claimant the administrative law judge's finding of eight years of coal mine employment. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co*., 6 BLR 1-710 (1983).

Pursuant to Section 718.202(a)(1), the administrative law judge correctly noted that six of the seven negative x-ray readings were by board-certified radiologists and B-readers while five of the seven positive readings were rendered by physicians with no special radiological credentials.[2] Decision and Order at 10. The administrative law judge then resolved the conflict between the B-readers on the October 10, 1984 x-ray by noting that as the July 24, 1985 and February 23, 1992 x-rays, also read by board-certified radiologists and B-readers, were read as negative, it was more likely that the negative readings of the October 10, 1984 film were correct.[3] *Id*. We affirm the administrative law judge's finding at Section 718.202(a)(1), as he permissibly accorded greater weight to the x-ray readings by physicians with superior qualifications and found the weight of the x-ray evidence negative for pneumoconiosis. *See Johnson v. Island Creek Coal Co*., 846 F.2d 364, 11 BLR 2-161 (6th Cir. 1988); *Woodward, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).[4]

At Section 718.202(a)(2), the administrative law judge correctly noted that there was no biopsy evidence to be considered. Decision and Order at 10. While he did not address Section 718.202(a)(3), his omission is harmless, *see Larioni, supra*, as the presumptions listed at Section 718.202(a)(3) are inapplicable to this case, since the record contains no evidence of complicated pneumoconiosis, the claim was filed after January 1, 1982, and claimant is a living miner. Director's Exhibit 1; *see* 20 C.F.R. §§718.304, 718.305, 718.306.

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[2] A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135 n.16, 11 BLR 2-1 n.16 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp*., 8 BLR 1-271 (1985).

[3] The administrative law judge stated that he was not giving the July 24, 1985 or February 23, 1992 x-rays any greater weight as later evidence. *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993).

[4] While the administrative law judge overlooked a positive x-ray reading by Dr. Bangudi, Director's Exhibit 23, and one by Dr. Ladaga, Director's Exhibit 32, we deem the error harmless, *see Larioni v. Director,* OWCP, 6 BLR 1-1276 (1984), because the record contains no evidence of any special radiological credentials for these two physicians, and the administrative law judge weighed the x-ray evidence in light of the readers' qualifications.

Pursuant to Section 718.202(a)(4), the administrative law judge stated only that "[t]here are no reasoned medical opinions in the record which could be considered to demonstrate the presence of pneumoconiosis, independent of erroneous positive x-ray readings." Decision and Order at 11. The Director contends that the administrative law judge's failure to make specific findings at Section 718.202(a)(4) is harmless error because his analysis at Section 718.204(c)(4) supports his conclusion that the medical opinion evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.204(a)(4). Director's Brief at 4. We disagree.

The record indicates that Drs. Bangudi, El-Amin, deGuzman, Ocampo, and Ladaga diagnosed pneumoconiosis. Director's Exhibits 23, 32. Dr. Sutherland diagnosed chronic obstructive pulmonary disease and bronchitis due to smoking, Director's Exhibit 12, while Dr. Mettu diagnosed chronic bronchitis for which he gave no etiology. Director's Exhibit 35. In his discussion at Section 718.204(c), the administrative law judge discredited the diagnoses of Drs. Bangudi, El-Amin, and deGuzman because they were based on the October 10, 1984 x-ray found to be negative by the administrative law judge. Decision and Order at 12. The administrative law judge also accorded less weight to Drs. Bangudi, Ocampo, deGuzman, and Ladaga for failing to account for claimant's obesity, heart disease, or smoking in their diagnoses. *Id*.

In evaluating the evidence pursuant to Section 718.202(a)(4), an administrative law judge may not discredit a medical opinion merely because it relies on a positive x-ray interpretation that conflicts with the weight of the x-ray evidence. *See Taylor v. Director, OWCP*, 9 BLR 1-22 (1986). As the administrative law judge impermissibly discredited the opinions of Drs. Bangudi, El-Amin, and deGuzman because they were based on an x-ray reading that he found was outweighed by other readings of record, *see Taylor, supra*, and because he failed to give a valid reason under Section 718.202(a)(4) for according the opinions of Drs. Bangudi, Ocampo, deGuzman, and Ladaga less weight,[5] we vacate his finding and remand the case for him to reconsider all the medical opinions in their entirety.

[5] We note that the record indicates that all but Dr. Ladaga noted claimant's smoking history, and that Drs. Ladaga, deGuzman, and Bangudi were aware of claimant's obesity. Director's Exhibits 23, 32. Further, there is no evidence in the record that claimant was ever diagnosed with heart disease. Thus, the administrative law judge's determination to accord less weight to the above medical opinions on these grounds is unsupported by the record. *See Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Pursuant to Section 718.204(c)(1) and (c)(2), the administrative law judge correctly noted that none of the pulmonary function or blood gas studies yielded qualifying values.[6] While the administrative law judge failed to address Section 718.204(c)(3), his omission is harmless, *see Larioni, supra*, as there is no evidence in the record of cor pulmonale with right-sided congestive heart failure.

Pursuant to Section 718.204(c)(4), the administrative law judge noted that "no physician stated that the claimant was totally disabled," and found that the evidence failed to establish total respiratory disability. Decision and Order at 12. Three opinions address claimant's respiratory disability. Drs. Sutherland and Mettu diagnosed a mild pulmonary impairment, and Dr. El-Amin found a "severe degree of small airway disease," a "mild degree of obstructive lung disease," and concluded that "on this basis, [claimant] should not do arduous manual labor . . . ." Director's Exhibits 12, 35, 23.

[6] A "qualifying" objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

The administrative law judge failed to compare these assessments of impairment with the exertional requirements of claimant's usual coal mine employment.[7] *See Budash v. Bethlehem Mines Corp.,* 9 BLR 1-48, *aff'd on recon* 9 BLR 1-104 (1986)(*en banc*). Thus, we vacate the administrative law judge's finding and remand this case for him to make findings regarding the exertional requirements of claimant's usual coal mine employment, *Budash, supra*; *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989), and then compare the medical opinions with these requirements to determine whether claimant has demonstrated total respiratory disability at Section 718.204(c)(4). *See Taylor v. Evans and Gambrel Co*., 12 BLR 1-83 (1988).

At Section 718.204(b) the administrative law judge found the evidence insufficient to establish causation. We affirm his causation finding with respect to Drs. Sutherland and Mettu[8], neither of whom attributed claimant's mild impairment to

[7] The record indicates that claimant noted that his usual coal mine employment required him to drive a truck and fix flat tires. Director's Exhibits 7, 8. He noted that he had to sit for ten to twelve hours, stand for two to three hours, and lift seventy-five pounds once a day. *Id*. In addition to the physicians' statements of degree of impairment, the record also contains medical reports listing claimant's physical limitations. Director's Exhibits 12, 35.

[8] The administrative law judge concluded that Dr. Mettu's diagnosis of a mild impairment caused by bronchitis was "consistent with smoking." Decision and Order at 12. The administrative law judge erred by substituting his judgment for that of Dr. Mettu, *see Marcum v. Director, OWCP*, 11 BLR 1-23 (1987), as the physician's medical report does not relate claimant's impairment to smoking. This error is

pneumoconiosis. Director's Exhibits 12, 35. On remand, however, if the administrative law judge reaches Section 718.204(b), he must consider whether Dr. El-Amin's opinion, which he did not discuss, establishes that claimant's total disability is due to pneumoconiosis. *See Adams v. Director, OWCP*, 868 F.2d 818, 13 BLR 2-52 (6th Cir. 1989).

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harmless, however, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), as Dr. Mettu did not relate claimant's bronchitis to dust exposure in coal mine employment. *See* 20 C.F.R. §718.201.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part, vacated in part, and remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge