BRB No. 02-0114 BLA

FRANK McCOY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VIRGINIA CREWS COAL COMPANY	)	DATE ISSUED:
	)	
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 Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Frank McCoy, Iaegar, West Virginia, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order (01-BLA-0292) of Administrative Law Judge Edward Terhune Miller denying claimant's request for modification of the denial of a duplicate 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).[2] Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law

[1] Ron Carson, Black Lung Program Director of Stone Mountain Health Services of Vansant, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2001). All

judge credited the parties' stipulation that claimant worked in qualifying coal mine employment for thirty-two years, but found that because claimant failed to establish the existence of pneumoconiosis and total respiratory disability, he failed to establish a basis for modification of the denial of his duplicate claim. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer has not responded to this appeal. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating he will not participate in this appeal.

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). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

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citations to the regulations, unless otherwise noted, refer to the amended regulations.

After careful consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. In evaluating the x-ray evidence, the administrative law judge properly accorded greater weight to the vast majority of negative readings by the best qualified readers. This was rational. *See* 20 C.F.R. §718.202(a)(1); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 4. Because the administrative law judge properly conducted a qualitative review of the x-ray evidence by considering the radiological expertise of the readers, we affirm the administrative law judge's Section 718.202(a)(1) determination. *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *see also Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.3d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); Decision and Order at 8. Relevant to Sections 718.202(a)(2) and (3), the administrative law judge properly found that the existence of pneumoconiosis could not be established at these sections. *See* 20 C.F.R. §§718.202(a)(2)-(3), 718.304, 718.305, 718.306.[3] Decision and Order at 8. Likewise, relevant to Section 718.202(a)(4), the record contains the medical opinions of three physicians, all of whom conducted pulmonary evaluations of claimant. Dr. Ranavaya diagnosed pneumoconiosis, while Drs. Vasudevan and Forehand found no evidence of the presence of coal workers' pneumoconiosis. Director's Exhibits 9, 32; Employer's Exhibit 1. The administrative law judge found that the opinions of Drs. Vasudevan and Forehand, that there is no evidence of coal workers' pneumoconiosis, were more persuasive because their opinions were supported by the overall x-ray evidence and were well documented and reasoned. This was rational. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trumbo*, *supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). Furthermore, the administrative law judge found that the opinion of Dr. Vasudevan was entitled to greater weight not only because of his superior

[3] Although, the administrative law judge stated that Section 718.305 was applicable and would be discussed later in the decision, a review of the Decision and Order reveals no such discussion. The presumption at Section 718.305 is not, however, applicable to the instant claim inasmuch as this claim was filed after January 1, 1982. *See* 20 C.F.R. §718.305(e). Therefore, we deem the administrative law judge's reference to the applicability of Section 718.305 as harmless error inasmuch as he found that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(3). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); Decision and Order at 9. Accordingly, the administrative law judge properly determined that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(3). *See* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305, 718.306.

credentials, but because he conducted the most recent pulmonary evaluation of claimant in 2000 and had the best overall view of claimant's health, based upon his ability to compare his 2000 evaluation of claimant with his 1994 evaluation. This was rational. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-137 (1986); *Rickey v. Director, OWCP*, 7 BLR 1-106, 1-108 (1984); *Spradlin v. Island Creek Coal Co.*, 6 BLR 1-716, 1-719 (1984). While noting that Dr. Ranavaya was Board-certified in occupational medicine and that he had rendered a well documented opinion, the administrative law judge, nevertheless, found that Dr. Ranavaya's opinion was less persuasive because Dr. Ranavaya relied on a positive x-ray interpretation, which was called into question by dually certified readers, Drs. Spitz, Wiot, and Shipley, and the overall weight of the negative x-ray evidence. This was rational. *Compton*, *supra*; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); Decision and Order at 9. Inasmuch as the administrative law judge's credibility determinations regarding the medical opinion evidence were rational, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Likewise, the administrative law judge's determination that, after weighing all of the evidence under Section 718.202(a), claimant failed to establish the existence of pneumoconiosis by a preponderance of the evidence is affirmed as this determination is supported by substantial evidence. *See Compton*, *supra*; *accord Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

Next, we turn to the administrative law judge's consideration of the evidence of record pursuant to Section 718.204(b). The administrative law judge determined that while the most recent qualifying pulmonary function study evidence of record was sufficient to demonstrate total disability under Section 718.204(b)(2)(i), the other evidence, non- qualifying blood gas studies and physicians' opinions, considered together, outweighed the qualifying pulmonary function study.[4] This was rational. *See Hicks*, *supra*; *Fields*, *supra; Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (*en banc*); Decision and Order at 11. The administrative law judge, therefore, properly found that, because claimant failed to establish

[4] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

the existence of pneumoconiosis or total disability, he failed to establish a basis for modification of the denial of his duplicate claim. *See Hess v. Director, OWCP*, 21 BLR 1-141 (1998).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge