

BRB No. 04-0943 BLA

CHESTER C. COLLETT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 07/29/2005
	)	
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 of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-5296) of Administrative Law Judge Jeffrey Tureck (the administrative law judge) 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 eighteen years of coal mine employment based on the parties' stipulation and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the Director, Office of Workers' Compensation Programs (the Director), failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Further, claimant contends that the evidence is sufficient to establish total disability at 20 C.F.R. §718.204(b).<sup>1</sup> Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director responds, urging the Board to reject claimant's contention that he failed to provide claimant with a complete and credible pulmonary evaluation.<sup>2</sup>

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially claimant contends that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. Specifically, claimant asserts that the administrative law judge found that Dr. Hussain's opinion lacks probative value. As required by Section 413(b) of the Act, 30 U.S.C. §923(b), the Director has a statutory obligation to provide a complete and credible pulmonary evaluation of the miner. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994). Section 725.406(a) provides that "[a] complete pulmonary evaluation includes a report of physical examination, a pulmonary function study, a chest roentgenogram and, unless medically contraindicated, a blood gas study." 20 C.F.R. §725.406(a). Further, Section 725.406(c) provides that "[i]f any medical examination or test conducted under paragraph (a) of this section is not administered

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<sup>1</sup>Claimant specifically argues that the administrative law judge erred in failing to conclude that his condition has worsened to the point that he is totally disabled since pneumoconiosis is a progressive and irreversible disease. Claimant's Brief at 6.

<sup>2</sup>Since the administrative law judge's length of coal mine employment finding and his findings at 20 C.F.R. §718.202(a)(2) and (a)(3) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

or reported in substantial compliance with the provisions of part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district director shall schedule the miner for further examination and testing.” 20 C.F.R. §725.406(c).

At the Director’s request, Dr. Hussain performed a pulmonary examination on claimant. Director’s Exhibit 10. Dr. Hussain diagnosed pneumoconiosis related to coal dust exposure and opined that claimant suffers from a mild impairment caused by pneumoconiosis. Director’s Exhibit 11. Dr. Hussain also opined that claimant has the respiratory capacity to perform the work of a coal miner or to perform comparable work in a dust-free environment. *Id.* In considering the medical opinion evidence at 20 C.F.R. §718.202(a)(4), the administrative law judge found that Dr. Hussain’s opinion lacked probative value.

We, however, hold that the administrative law judge erred in finding that Dr. Hussain’s opinion lacked probative value on the grounds that it is not reasoned and documented. As argued by the Director, Dr. Hussain’s opinion that claimant suffers from pneumoconiosis is a valid diagnosis at 20 C.F.R. §718.202(a)(1) because it is based on a positive x-ray reading. *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 55 (1988) (a physician need not perform a physical examination in order to provide a credible diagnosis of pneumoconiosis by x-ray). Moreover, as further argued by the Director, the administrative law judge actually found Dr. Hussain’s diagnosis of pneumoconiosis, based on a positive x-ray reading, *outweighed* by the contrary conclusion of a better qualified physician who read the same x-ray, rather than finding that the diagnosis lacked probative value.<sup>3</sup> *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984).

The Director’s obligation to provide claimant with a complete and credible pulmonary evaluation does not require him to provide claimant with the most persuasive medical opinion in the record. *See generally Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984). In this case, the Director satisfied the requirements for a complete and credible pulmonary evaluation set forth at 20 C.F.R. §725.406. Dr. Hussain’s examination and testing of claimant are in substantial compliance with the provisions of Part 718. Director’s Exhibit 11. In addition, Dr. Hussain’s opinion addressed all of the elements of entitlement. *Id.*; *see generally Cline v. Director, OWCP*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992). Thus, we reject claimant’s assertion that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation.

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<sup>3</sup>Dr. Hussain read the June 13, 2001 x-ray as positive for pneumoconiosis, Director’s Exhibit 11, while Dr. Wiot reread the same x-ray as negative for pneumoconiosis, Director’s Exhibit 33. Unlike Dr. Hussain, who has no particular radiological credentials, Dr. Wiot is a B reader and a Board-certified radiologist. Director’s Exhibits 11, 33.

Next, claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Specifically, claimant asserts that the administrative law judge improperly relied on the qualifications of the physicians submitting negative x-ray readings, and the numerical superiority of the negative x-ray readings. The record consists of six interpretations of three x-rays, dated February 24, 2001, June 13, 2001, and July 9, 2001. Of the six x-ray interpretations, two readings are positive for pneumoconiosis, Director's Exhibits 11, 12, and four readings are negative for pneumoconiosis, Director's Exhibits 27, 30, 33. Both of the positive x-ray readings are by physicians who are not B readers, while all of the negative readings are by physicians who are, at a minimum, B readers. Dr. Baker originally read the February 24, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 12, while Dr. Wiot, a B reader and a Board-certified radiologist, reread the same x-ray as negative for pneumoconiosis, Director's Exhibit 33. Further, Dr. Hussain originally read the June 13, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 11, while Dr. Wiot reread the same x-ray as negative for pneumoconiosis, Director's Exhibit 33. Drs. Broudy and Wiot read the July 9, 2001 x-ray as negative for pneumoconiosis. Director's Exhibits 27, 30. Dr. Broudy is a B reader. Director's Exhibit 27. After considering the quantitative and qualitative nature of the conflicting x-rays, the administrative law judge found the x-ray evidence insufficient to establish the existence of pneumoconiosis.

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge must consider the quantity of the evidence in light of the difference in qualifications of the readers. *Staton v. Norfolk & Western Railroad 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. 1993). In this case, the administrative law judge properly accorded greater weight to the x-ray readings by physicians who are B readers.<sup>4</sup> *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge stated that "Dr. Baker is [c]laimant's treating physician but neither Dr. Baker nor Dr. Hussain is a B-reader (a government-certified expert in interpreting x-rays)." Decision and Order at 3. However, the administrative law judge stated that "[b]oth Drs. Wiot and Broudy are B-readers." *Id.* Since the administrative law judge reasonably considered the quantitative nature and the qualitative nature of the conflicting x-ray readings, we reject claimant's assertion that the administrative law judge improperly relied on the qualifications of the physicians submitting negative x-ray readings, and the numerical superiority of the negative x-ray readings. *Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87. Further, since it is supported

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<sup>4</sup>While Dr. Wiot is dually qualified as a B reader and a Board-certified radiologist, the administrative law judge did not draw a distinction between physicians qualified as B readers and dually qualified readers.

by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).<sup>5</sup>

Claimant further contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the opinions of Drs. Baker, Broudy, Hussain, and Repsher. Drs. Baker and Hussain diagnosed "clinical" pneumoconiosis.<sup>6</sup> Specifically, in a report dated February 24, 2001, Dr. Baker diagnosed coal workers' pneumoconiosis based on a positive x-ray reading and claimant's coal dust exposure history.<sup>7</sup> Director's Exhibit 12. Similarly, in a report dated June 13, 2001, Dr. Hussain diagnosed pneumoconiosis based on a positive x-ray reading and claimant's coal dust exposure history. Director's Exhibit 11. Neither Dr. Baker nor Dr. Hussain diagnosed "legal" pneumoconiosis.<sup>8</sup> Drs. Broudy and Repsher opined that claimant does not suffer from coal workers' pneumoconiosis. Director's Exhibit 27; Employer's Exhibit 2. Based on his weighing of the opinions of Drs. Baker and Hussain, the administrative law judge concluded that claimant failed to establish that he suffers from either "clinical" or "legal" pneumoconiosis.

Claimant asserts that the administrative law judge erred in discrediting Dr. Baker's opinion. As discussed *supra*, Dr. Baker diagnosed pneumoconiosis based on a positive x-ray reading and claimant's coal dust exposure history. Director's Exhibit 12. The administrative

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<sup>5</sup>Claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for his contention, however, and the Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 3. Thus, we reject claimant's suggestion.

<sup>6</sup>A finding of either "clinical" pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1), or "legal" pneumoconiosis, *see* 20 C.F.R. §718.201(a)(2), is sufficient to support a finding of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

<sup>7</sup>Although Dr. Baker also diagnosed chronic bronchitis based on history, Dr. Baker did not render an opinion that this condition was related to coal dust exposure. Director's Exhibit 13. Thus, Dr. Baker's diagnosis of chronic bronchitis is insufficient to establish the existence of "legal" pneumoconiosis at 20 C.F.R. §718.201(a)(2).

<sup>8</sup>"Legal" pneumoconiosis includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

law judge properly discredited Dr. Baker's diagnosis of pneumoconiosis in the context of Section 718.202(a)(4) because it is based only on an x-ray reading and a history of coal dust exposure. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Thus, we reject claimant's assertion that the administrative law judge erred in discrediting Dr. Baker's opinion. Further, since it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718.<sup>9</sup> *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>9</sup>In view of our disposition of this case at 20 C.F.R. §718.202(a), we decline to address claimant's contention at 20 C.F.R. §718.204(b).

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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JUDITH S. BOGGS  
Administrative Appeals Judge