

BRB No. 04-0944 BLA

HERMAN ADKINS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 07/22/2005
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

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

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

Rita Roppolo (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-6494) of Administrative Law Judge Robert L. Hillyard 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). After crediting claimant with thirty-one years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also argues that the administrative law

judge erred in finding the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.20(b)(2)(iv). The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).<sup>1</sup> The x-ray evidence consists of interpretations of two rays taken on March 21, 2001 and May 15, 2002. Although Dr. Baker, a reader with no special radiological qualifications, interpreted claimant's March 21, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 7, Dr. Barrett, a B reader and a Board-certified radiologist, interpreted this x-ray as negative for the disease. Director's Exhibit 8. The administrative law judge acted within his discretion in crediting Dr. Barrett's negative interpretation of claimant's March 21, 2001 x-ray over Dr. Baker's positive interpretation of this film based upon Dr. Barrett's superior qualifications. *See Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 8. The only other x-ray interpretation of record, Dr. Hussain's interpretation of the May 15, 2002 x-ray, is negative for pneumoconiosis.<sup>2</sup> Director's Exhibit 13. Because it is based upon substantial evidence,<sup>3</sup> the administrative law judge's finding that the x-ray evidence is

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<sup>1</sup>Because no party challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>2</sup>Dr. Sargent interpreted claimant's May 15, 2002 x-ray for quality purposes only. *See* Director's Exhibit 14.

<sup>3</sup>In challenging the administrative law judge's finding that the newly submitted x-ray evidence is insufficient to establish the existence of pneumoconiosis, claimant asserts that an administrative law judge "need not defer to a doctor with superior qualifications" and that an administrative law judge "need not accept as conclusive the numerical superiority of the x-ray interpretations." Claimant's Brief at 3. Claimant also asserts that the administrative law judge "may have 'selectively analyzed' the x-ray evidence." *Id.* In this case, the administrative law judge permissibly considered both the quality and the quantity of the x-ray evidence in finding it insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See Director, OWCP v. Greenwich*

insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is affirmed.

Claimant also argues that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). While Dr. Baker opined that claimant suffered from pneumoconiosis, Director's Exhibit 7, Dr. Hussain opined that claimant did not suffer from any occupational lung diseases caused by claimant's coal mine employment. Director's Exhibit 9.

The administrative law judge permissibly discredited the diagnosis of coal workers' pneumoconiosis rendered by Dr. Baker in his March 21, 2001 report because the administrative law judge found that it was merely a restatement of an x-ray opinion.<sup>4</sup> *Cornett v. Benham Coal Co.*, 277 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).

Dr. Baker also diagnosed chronic obstructive pulmonary disease and chronic bronchitis. Director's Exhibit 7. The administrative law judge questioned Dr. Baker's diagnosis of chronic obstructive pulmonary disease because it was based upon a nonconforming pulmonary function study.<sup>5</sup> Decision and Order at 10. Because claimant does not challenge the administrative law judge's basis for discrediting Dr. Baker's diagnosis of chronic obstructive pulmonary disease, this finding is affirmed. *Skrack v.*

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*Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *Staton v. Norfolk & Western Ry. 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). Moreover, claimant has provided no support for his assertion that the administrative law judge "may have 'selectively analyzed' the x-ray evidence."

<sup>4</sup>The administrative law judge also noted that the May 21, 2001 x-ray that Dr. Baker interpreted as positive for pneumoconiosis was interpreted by Dr. Barrett, a better qualified physician, as negative for pneumoconiosis, thus calling into question the reliability of Dr. Baker's opinion. See *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 9-10; Director's Exhibits 7, 8.

<sup>5</sup>The administrative law judge accurately noted that Dr. Baker did not record the extent of claimant's cooperation and comprehension on the March 21, 2001 pulmonary function study. Decision and Order at 10; Director's Exhibit 7.

*Island Creek Coal Co.*, 6 BLR 1-710 (1983). The administrative law judge also properly discredited Dr. Baker's diagnosis of chronic bronchitis because the doctor failed to provide any basis, other than history, for his conclusion.<sup>6</sup> See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 11.

Claimant's remaining statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis.<sup>7</sup> We, therefore, affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). See *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

In light of our affirmance of the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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<sup>6</sup>Moreover, while it is clear that Dr. Baker attributed claimant's coal workers' pneumoconiosis to his coal mine employment, it is not clear whether Dr. Baker actually rendered an opinion as to the etiology of claimant's chronic obstructive pulmonary disease and chronic bronchitis. See Director's Exhibit 7. If Dr. Baker did not provide an etiology for his diagnoses of chronic obstructive pulmonary disease and chronic bronchitis, these conditions cannot satisfy the definition of legal pneumoconiosis. See 20 C.F.R. §718.201(a)(2).

<sup>7</sup>The record does not contain any other medical opinion evidence supportive of a finding of pneumoconiosis.

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