

BRB No. 05-0846 BLA

BRUCE BUSH)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY)	
)	DATE ISSUED: 07/26/2006
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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C. , for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6315) of Administrative Law Judge Pamela Lakes Wood 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 noted that the

parties stipulated to fifteen years of coal mine employment. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ 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), a necessary element of entitlement. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), and total disability at 20 C.F.R. §718.204(b). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a credible pulmonary evaluation, as required pursuant to Section 413(b) of the Act and its implementing regulation at 20 C.F.R. §725.406(a). Employer responds, urging affirmance of the denial of benefits. The Director responds, contending that he satisfied his obligation to provide claimant with a complete pulmonary evaluation, as required under the Act, by virtue of Dr. Simpao's assessment of claimant.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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).

Claimant specifically 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).² Claimant argues that the administrative law judge erroneously "relied almost solely on the qualifications of the physicians providing the x-ray interpretations," "placed substantial weight on the numerical superiority of x-ray interpretations," and "may have 'selectively analyzed' the x-ray evidence." Claimant's Brief at 3.

Claimant's contentions lack merit. There are four readings of three x-rays dated June 28, 2002³, January 13, 2003 and February 19, 2004. With regard to the June 28,

¹Claimant filed his claim for benefits on April 5, 2002. Director's Exhibit 2. A formal hearing was held before Administrative Law Judge Pamela Lakes Wood on April 29, 2004.

²As claimant does not challenge the administrative law judge's findings at 20 C.F.R. §718.202(a)(2)-(4), we affirm them. *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³In addition, Dr. Barrett read the June 28, 2002 x-ray for quality only. Director's Exhibit 12.

2002 x-ray, the administrative law judge rationally found it to be insufficient to establish pneumoconiosis because, while it was read as positive by Dr. Simpao, a physician with no special radiological qualifications, it was read as negative by Dr. Hayes, a dually qualified physician. *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); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1 (1999) (*en banc*); Director's Exhibits 12, 26, 29; Employer's Exhibit 2. The administrative law judge also properly found that the x-rays dated January 13, 2003 and February 19, 2004, were each read once as negative by Drs. Broudy and Rosenberg, respectively, both B readers. Director's Exhibit 26; Employer's Exhibit 2. Thus, the administrative law judge rationally found that claimant had not established the existence of pneumoconiosis by a preponderance of the x-ray evidence at 20 C.F.R. §718.202(a)(1). *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); Decision and Order at 9. Further, claimant provides no support for his contention that the administrative law judge selectively analyzed the x-ray evidence. *White v. White Coal Co.*, 23 BLR 1-1, 1-5 (2004). Based on the foregoing, we hold that, contrary to claimant's assertions, the administrative law judge properly considered both the qualitative and quantitative nature of the x-ray evidence. *Staton, supra*; *Woodward, supra*. We thus affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1), as it is supported by substantial evidence.

Claimant contends that, given the administrative law judge's treatment of Dr. Simpao's opinion at 20 C.F.R. §718.202(a)(4), the Director failed to provide claimant with a credible pulmonary evaluation as required under the Act.⁴ The Director argues that he has fulfilled his statutory obligation to provide claimant with a complete and credible pulmonary evaluation, based on Dr. Simpao's assessment of claimant.

Dr. Simpao examined claimant on June 28, 2002, and diagnosed coal worker's pneumoconiosis of 1/0 profusion, based on multiple years of coal dust exposure. Director's Exhibit 12. Dr. Simpao specifically found that claimant's occupational lung disease, which was caused by his coal mine employment, was based on "[f]indings on the chest X-RAY and EKG along with physical findings and symptomatology." *Id.* Dr. Simpao also found that claimant had a mild pulmonary impairment related to pneumoconiosis and was unable to perform his usual coal mine work. *Id.* In his summary of the diagnostic testing, Dr. Simpao indicated that the pulmonary function study and blood gas study were normal. In summarizing the results of the EKG, Dr.

⁴On behalf of the Director, Office of Workers' Compensation Programs, Dr. Simpao examined claimant on June 28, 2002. *See* Director's Exhibit 12.

Simpao noted, “Q wave in lead III and nonspecific ST changes. Cannot rule out ischemia in the inferior lateral leads.” *Id.*

In considering the evidence at 20 C.F.R. §718.202(a)(4), the administrative law judge found the opinions of Drs. Baker and Rosenberg better reasoned and documented than that of Dr. Simpao, and, thus, rationally found the medical opinion evidence insufficient to establish the existence of pneumoconiosis. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

In order to provide claimant with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim, as required by the Act and its implementing regulations, 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.401, 725.405(b); *see Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*), the Director must provide claimant with a medical opinion that addresses all of the elements of entitlement. *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994). The Director’s obligation does not require the Director to provide claimant with the most persuasive medical opinion in the record. *See generally Newman, supra.*

We find no merit in claimant’s contention that the Director failed to provide claimant with a credible pulmonary evaluation as required under the Act. The administrative law judge simply found the opinions of Drs. Broudy and Rosenberg better reasoned and documented than Dr. Simpao’s opinion. *Clark, supra; Fields, supra; King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 10. The administrative law judge thereby did not discredit Dr. Simpao’s opinion, but rather provided rational bases for finding it less credible and deserving of little weight. Accordingly, we agree with the Director’s argument that he fulfilled his statutory duty to provide claimant with a credible pulmonary evaluation by virtue of Dr. Simpao’s assessment of claimant, and we reject claimant’s argument to the contrary. *See generally Newman, supra.*

Since claimant has failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, there is no need to address claimant’s contention at 20 C.F.R. §718.204(b). *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-36 (1986).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge