BRB No. 06-0204 BLA

STEVENSON R. BLANKENSHIP Claimant-Petitioner v. EASTERN ASSOCIATED COAL CORPORATION Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/26/2006 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas M. Burke, Associate Chief Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (04-BLA-5737) of Associate Chief Administrative Law Judge Thomas M. Burke rendered 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). Claimant filed his claim for benefits on August 30, 2002. Director's Exhibit 2. The administrative law judge credited claimant with thirty-four years and nine months of coal mine employment pursuant to the

parties' stipulation.[1] The administrative law judge found that the medical evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical evidence. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has declined to file a substantive response in this appeal.

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered five readings of four x-rays. There was one positive reading for pneumoconiosis by Dr. Ranavaya, a B-reader. Director's Exhibit 9. However, the administrative law judge permissibly found that reading outweighed because "[a]ll the dually qualified B-readers and Board-certified radiologists found no x-ray evidence of pneumoconiosis." Decision and Order at 4-5; *see Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). Because the administrative law judge weighed the x-ray readings based on the readers' radiological qualifications, claimant's contention that the administrative law judge merely relied on the negative x-rays to make his finding lacks merit. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered medical reports from Drs. Ranavaya, Fino, and Tuteur, along with treatment records from Drs. Porterfield and Zaldivar. Dr. Ranavaya diagnosed pneumoconiosis "[b]ased on a 39 year long history of occupational exposure to dust in coal mining . . . and radiological

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[1] The record indicates that claimant's coal mine employment occurred in West Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

evidence of it." Director's Exhibit 9 at 4. The administrative law judge gave Dr. Ranavaya's diagnosis "little weight" because Dr. Ranavaya based it on his positive x-ray reading that was "at odds with the x-ray evidence of record . . . ." Decision and Order at 6. Claimant argues that the administrative law judge improperly reviewed the opinion based solely on whether Dr. Ranavaya agreed with the administrative law judge's finding that the x-rays did not establish pneumoconiosis. This contention lacks merit. As just discussed, the administrative law judge found that Dr. Ranavaya's positive x-ray reading was outweighed by the negative readings from more highly-qualified physicians. Decision and Order at 4-5. He therefore reasonably discounted Dr. Ranavaya's x-ray-based diagnosis of pneumoconiosis. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211-12, 22 BLR 2-162, 2-175 (4th Cir. 2000).

Moreover, the administrative law judge went on to consider whether Dr. Ranavaya diagnosed "legal" pneumoconiosis, that is, any "chronic lung disease or impairment . . . arising out of coal mine employment." 20 C.F.R. §718.20(a)(2). The administrative law judge correctly found that although Dr. Ranavaya diagnosed "chronic obstructive pulmonary disease-chronic bronchitis," Dr. Ranavaya specified that this disease was "unrelated to occupational exposure to dust in coal mining and could be related to a 20 pack year history of cigarette smoking." Director's Exhibit 9 at 4. Similarly, the administrative law judge found that Dr. Porterfield diagnosed chronic obstructive pulmonary disease and asthma, but that there was no evidence in the treatment notes that these diseases were related to coal mine dust exposure. Director's Exhibit 11. Finally, the administrative law judge determined that Dr. Porterfield's diagnosis of coal workers' pneumoconiosis listed in one of his treatment notes was unexplained. This was a finding within the administrative law judge's discretion. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997).

Review of the record indicates that there were no other diagnoses of pneumoconiosis contained in the medical opinions. Because the administrative law judge properly weighed the medical opinion evidence and substantial evidence supports his finding, we affirm his finding pursuant to 20 C.F.R. §718.202(a)(4). Additionally, we affirm his finding that "when considered together, the preponderance of all the evidence of record" did not establish the existence of pneumoconiosis. Decision and Order at 7; *see Compton*, 211 F.3d at 211-12, 22 BLR at 2-175.

Because claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a necessary element of entitlement under Part 718, we affirm the denial of benefits. *See Anderson,* 12 BLR at 1-112.

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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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge