

BRB No. 07-0890 BLA

T.D.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
PRATT MINING COMPANY)	
)	
and)	
)	
WEST VIRGINIA COAL WORKERS’)	DATE ISSUED: 07/17/2008
PNEUMOCONIOSIS FUND)	
)	
Employer/Carrier-)	
Respondents)	
)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Robert M. Williams (Maroney, Williams, Weaver & Pancake, PLLC), Charleston, West Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2006-BLA-5923) of Administrative Law Judge Daniel L. Leland (the administrative law judge) 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). The administrative law judge credited claimant with thirty years of qualifying coal mine employment, and adjudicated this claim, filed on July 18, 2005, pursuant to the regulatory provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence was insufficient to establish the existence of either simple or complicated pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1)-(4), 718.304, and insufficient to establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's weighing of the evidence in finding that complicated pneumoconiosis was not established at Section 718.304. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has declined to participate 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.¹ 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); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Claimant contends that the administrative law judge erred in finding that complicated pneumoconiosis was not established pursuant to Section 718.304. Specifically, claimant maintains that all of the independent physicians who have examined claimant have opined that he suffers from complicated pneumoconiosis, and that the x-ray interpretation of Dr. Hayes is positive for complicated pneumoconiosis, whereas employer's physicians all have a pecuniary interest in the outcome of this case. Claimant further asserts that the evidence in this case is conflicting and presents true doubt, thus the administrative law judge was required to resolve the issue in claimant's favor. Claimant's Brief at 3-4. Claimant's arguments are without merit.

¹ The law of the United States Court of Appeals for the Fourth Circuit is applicable, as the miner was employed in coal mining in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibits 3, 5, 6.

The Board has held that, absent a foundation in the record for a finding that a medical expert is either biased or independent, the administrative law judge may neither discredit nor credit the opinion of any physician for this reason alone when weighing the conflicting evidence of record. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-36 (1991)(*en banc*). As there is no support in the record for claimant's allegations of bias and/or independence, they are rejected. Additionally, as the "true doubt" rule is no longer valid, *see Director 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), the administrative law judge properly required claimant to prove entitlement by a preponderance of the evidence.

Here, the administrative law judge assessed the conflicting evidence of record and found that it was insufficient to establish complicated pneumoconiosis under Section 718.304.² In so finding, the administrative law judge determined that the record contained an August 17, 2005 x-ray that was interpreted by Dr. Hayes, a B reader, as positive for pneumoconiosis with 1/1, q/q and Category B opacities, and by Drs. Wheeler, Scott and Scatarige, all dually-qualified Board-certified radiologists and B readers, as negative for both small and large pneumoconiotic opacities. Director's Exhibit 11; Employer's Exhibit 2; Decision and Order at 5. The administrative law judge acted within his discretion in finding that the weight of the x-ray evidence was negative for pneumoconiosis under subsection (a), based on a numerical preponderance of negative readings by the better-qualified readers. Decision and Order at 5; *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-09, 22 BLR 2-162, 2-169-70 (4th Cir. 2000); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). As the record contains no biopsy evidence, claimant cannot establish invocation under subsection (b). Next, at subsection (c), the administrative law judge determined that the computerized tomography (CT) scan dated December 13, 2004, was interpreted as negative for pneumoconiosis, without contradiction, by Dr. Scatarige. Decision and Order at 3, 6; Employer's Exhibit 4. Additionally, the administrative law judge permissibly gave little weight to the opinions of the physicians who testified before the West Virginia Occupational Pneumoconiosis Board that a June 28, 2005 x-ray demonstrated progressive massive fibrosis, as this x-ray was not contained in the record. Decision and Order at 5; Claimant's Exhibit 1; *see Clark v. Karst-Robbins Coal Co.*, 12

² 20 C.F.R. §718.304 of the regulations provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which: (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3)(A); 20 C.F.R. §718.304(a)-(c).

BLR 1-149 (1989)(*en banc*). Lastly, the administrative law judge rationally discredited Dr. Walker's diagnosis of complicated pneumoconiosis, as it was based on Dr. Hayes's positive x-ray interpretation that the administrative law judge found to be outweighed by the negative interpretations of the same film. Decision and Order at 5; Director's Exhibit 11; *see Compton*, 211 F.3d at 211-12, 22 BLR at 2-171-72. Consequently, weighing all of the categories together, the administrative law judge properly found that claimant failed to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304(a)-(c), and we affirm his finding as supported by substantial evidence. *See Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000).

Because claimant has not identified any specific legal or factual errors in the administrative law judge's weighing of the medical evidence pursuant to 20 C.F.R. Part 718, claimant has failed to provide a basis upon which the Board may review the administrative law judge's Decision and Order. *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); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Consequently, we affirm the administrative law judge's finding that claimant is not entitled to benefits.

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