BRB No. 99-0939 BLA

BOBBY RAY BLANKENSHIP	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
F & B COAL COMPANY	)	
	)	
and	)	DATE ISSUED:
	)	
PIKEVILLE COAL COMPANY	)	
	)	
Employers-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 Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden LLP), Washington, D.C., for Pikeville Coal Company.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (98-BLA-0455) of Administrative Law Judge Mollie W. Neal 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 sixteen years of coal mine employment and determining that Pikeville Coal Company is the responsible operator, the administrative law judge considered the instant claim, a duplicate claim filed on March 17, 1994, pursuant to the applicable regulations at 20 C.F.R. Part 718.[1] The administrative law judge found that the newly submitted evidence was insufficient to

[1]Claimant filed a previous claim for benefits on July 19, 1988. Director's Exhibit 53. This

establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4) and total disability under 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge found that claimant failed to establish a material change in conditions under 20 C.F.R. §725.309. The administrative law judge thus denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the new evidence insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1) and (a)(4) and total disability under Section 718.204(c)(4). Pikeville Coal Company responds in support of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not presently intend to participate in this appeal.[2]

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).

On appeal, claimant contends that the administrative law judge erred in failing to conclude that the existence of pneumoconiosis was established under Section 718.202(a)(1) in light of two positive interpretations of the x-ray film dated January 19, 1996, interpretations which were submitted by Drs. Fritzhand and Rubenstein. Claimant asserts that these two interpretations should have been accorded determinative weight because Drs. Fritzhand and Rubenstein are just as well qualified as the radiologists upon whom the administrative law judge relied. Claimant's contention lacks merit. The administrative law judge properly found that the record does not reflect that Dr. Fritzhand is either a B reader or Board-certified radiologist. Decision and Order at 6. In addition, although the administrative law judge erred in stating that Dr. Rubenstein is a B reader without

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claim was finally denied on July 29, 1991 by the district director, who determined that claimant did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a), and total disability under 20 C.F.R. §718.204(c). *Id*. Claimant took no further action in pursuit of benefits until filing the instant duplicate claim on March 17, 1994. Director's Exhibit 1.

[2]We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment and responsible operator findings, as well as the administrative law judge's findings under 20 C.F.R. §§718.202(a)(2), (a)(3) and 718.204(c)(1)-(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 4-6, 9-10.

recognizing that Dr. Rubenstein is also a Board-certified radiologist, the administrative law judge's omission constitutes harmless error inasmuch as the administrative law judge properly determined that the January 19, 1996 film read by Dr. Rubenstein was read as negative by two physicians dually-qualified as B reader/Board-certified radiologists, *i.e.*, Drs. Scott and Wheeler. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983); Decision and Order at 6; Director's Exhibit 55. The administrative law judge's finding that, from a qualitative and quantitative standpoint, the weight of the readings of the January 19, 1996 x-ray film is negative for pneumoconiosis is supported by substantial evidence and is in accordance with law. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Roberts v. Bethlehem Mining Corp.*, 8 BLR 1-211 (1985); Decision and Order at 6; Director's Exhibit 55. Moreover, the administrative law judge properly found that, aside from the two positive interpretations of the January 19, 1996 film from Drs. Fritzhand and Rubenstein, all of the remaining newly submitted x-ray interpretations were negative for pneumoconiosis. Decision and Order at 6; Director's Exhibits 12-14, 16-18, 20-24, 50, 52, 55; Employer's Exhibit 2. We, therefore, affirm the administrative law judge's finding that the new x-ray evidence was insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(a)(1). *See Akers, supra; Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990).

Claimant also contends that the administrative law judge erred in discounting the medical opinions of Drs. Modi and Fritzhand in finding the new evidence insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4) and total disability under Section 718.204(c)(4). Claimant contends that the administrative law judge should have accorded determinative weight to the shared opinion of Drs. Modi and Fritzhand that claimant has pneumoconiosis and is totally disabled due to the disease because Dr. Modi is claimant's family and treating physician who has seen claimant on numerous occasions over several years, and because Dr. Fritzhand examined claimant on a number of occasions. Claimant further generally argues that the physicians who examined claimant on behalf of employer should have been accorded little or no weight because these physicians saw claimant on a one-time basis. Claimant's contentions lack merit.

The administrative law judge duly noted that Dr. Modi was claimant's treating physician, but he was not required to credit Dr. Modi's opinion on that basis. Decision and Order at 7. A physician's status as a treating physician is just one of the factors to be considered in rendering a decision. *See Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). In the instant case, the administrative law judge properly discounted Dr. Modi's medical opinion upon finding that Dr. Modi did not document the bases for his opinion, and because Dr. Modi's opinion was unsupported by objective evidence.[3] *See Akers, supra; Clark v. Karst-*

[3]The administrative law judge correctly found that Dr. Modi did not identify the date or the classification of the x-ray which the doctor indicated in his May 1997 treatment notes was suggestive of pneumoconiosis. Decision and Order at 7; Director's Exhibit 55. The administrative law judge also properly determined that the only objective medical evidence contained in Dr. Modi's records consists of pulmonary function and arterial blood gas studies administered in February of 1994, which were non-qualifying, and which Drs. Branscomb and Fino found to have produced

Robbins Coal Co., 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); Decision and Order at 7; Director's Exhibits 13, 55. Moreover, the administrative law judge properly questioned Dr. Modi's credibility in view of the doctor's guilty plea in a criminal case involving income tax evasion and fraud, documentation of which is contained in the record. *See Hutchens v. Director,* OWCP, 8 BLR 1-16 (1985); Decision and Order at 8; Director's Exhibit 55.

In addition, the administrative law judge properly discounted Dr. Fritzhand's opinion because Dr. Fritzhand relied upon an exaggerated coal mine employment history of thirty-four years, rather than a sixteen year history, which the administrative law judge found was documented by the record and which claimant does not dispute on appeal. *See Clark, supra; Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); Decision and Order at 4-5, 7; Director's Exhibits 14, 55. The administrative law judge also properly discounted Dr. Fritzhand's opinion because Dr. Fritzhand based his opinion, in part, upon his positive x-ray interpretation of the January 19, 1996 film, which was called into question by the negative rereadings of this film by two physicians possessing superior qualifications as B reader/Board-certified radiologists, as discussed *supra*. *See Winters v. Director, OWCP*, 6 BLR 1-877 (1984); Decision and Order at 7; Director's Exhibits 14, 55.

Furthermore, contrary to claimant's contention, the administrative law judge properly accorded greatest weight to Dr. Broudy's opinion, which indicates that claimant does not suffer from pneumoconiosis and is not totally disabled from a pulmonary or respiratory standpoint, on the basis that Dr. Broudy is Board-certified in internal medicine and pulmonary diseases, and thus possesses qualifications superior to those of Drs. Modi and Fritzhand.[4] See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 536, 21 BLR 2-323, 2-341 (4th Cir. 1998); *Roberts, supra*; Decision and Order at 8; Director's Exhibit 55. The administrative law judge also properly credited Dr. Broudy's opinion upon finding it consistent with the objective evidence of record and supported by the opinions of Drs. Branscomb and Fino, doctors whom the administrative law judge correctly stated are also Board-certified in internal medicine. *See Clark, supra; Tackett, supra; Fields, supra*; Decision and Order at 8; Director's Exhibit 55. We, therefore, affirm the administrative law judge's finding that the new medical opinion evidence was insufficient the existence of pneumoconiosis under Section 718.202(a)(4) and total disability under Section 718.204(c)(4). Consequently, we affirm the administrative law judge's finding that claimant failed to establish a material change in conditions pursuant to Section 725.309.

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normal results. *Id.*

[4]The record reflects that Drs. Modi and Fritzhand are not similarly Board-certified in either internal medicine or the subspecialty of pulmonary diseases. Director's Exhibit 55.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge