BRB No. 03-0749 BLA

JAMES E. EVERSOLE Claimant-Petitioner v. LEECO, INCORPORATED and TRANSCO ENERGY COMPANY Employer/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/14/2004 DECISION and ORDER

Appeal of the Decision and Order of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Lois A. Kitts (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (02-BLA-5389) of Administrative Law Judge Daniel J. Roketenetz 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).[1] After crediting claimant with at least twenty-five 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(c)(1)-(4) (2000). 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 medical opinion evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4) (2000).[2] Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

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). The x-ray evidence consists of interpretations of four x-rays taken on May 16, 2001, August 15, 2001, September 12, 2001 and March 11, 2003. In his consideration of the x-ray evidence, the administrative law judge properly accorded greater weight to the interpretations rendered by B readers and/or Board-certified

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

[3] 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).

radiologists. See *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 5-6. Because all of the interpretations rendered by physicians with these radiological qualifications are negative for pneumoconiosis,[4] the administrative law judge properly found that the x-ray evidence is insufficient to establish the existence of pneumoconiosis. We, therefore, affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Claimant also argues that the administrative law judge erred in finding the opinions of Drs. Baker and Hussain insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). We disagree. The administrative law judge permissibly discredited the diagnoses of coal workers' pneumoconiosis rendered by Drs. Baker and Hussain because he found that they were merely restatements of x-ray opinions, noting that neither physician stated any reason for his diagnosis beyond his x-ray interpretation and claimant's coal dust exposure history.[5] *Cornett v. Benham Coal, Inc.*, 227 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); Decision and Order at 8. Because claimant does not assert any additional error,[6] we affirm the administrative law judge's finding that the newly submitted medical opinion

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[4] Although Dr. Baker, a physician with no special radiological qualifications, interpreted claimant's May 16, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 12, and Dr. Hussain, a physician with no special radiological qualifications, interpreted claimant's August 15, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 13, Dr. Wiot, a B reader and Board-certified radiologist, interpreted each of these x-rays as negative for pneumoconiosis. Director's Exhibit 14.

Dr. Broudy, a B reader, interpreted claimant's September 12, 2001 x-ray as negative for pneumoconiosis. Director's Exhibit 15. Dr. Rosenberg, a B reader, interpreted claimant's March 11, 2003 x-ray as negative for pneumoconiosis. Employer's Exhibit 1.

[5] Dr. Baker also diagnosed bronchitis. However, because Dr. Baker failed to provide an etiology for this diagnosis, this condition does not satisfy the definition of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2).

[6] The remaining medical opinions of record do not support a finding of pneumoconiosis. Dr. Broudy opined that claimant did not suffer from coal workers' pneumoconiosis. Director's Exhibit 15. Dr. Rosenberg also opined that claimant did not have coal workers' pneumoconiosis. Employer's Exhibit 1.

evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's finding that claimant failed 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 medical opinion evidence is insufficient to establish total disability. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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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BETTY JEAN HALL
Administrative Appeals Judge