

BRB No. 03-0851 BLA

BOBBY ADKINS)
)
 Claimant-Petitioner)
)
 v.)
)
 SHIPYARD RIVER COAL TERMINAL,) DATE ISSUED: 06/22/2004
 C/O AEI RESOURCES, INCORPORATED)
)
 and)
)
 ZEIGLER COAL HOLDING COMPANY,)
 C/O AEI RESOURCES, INCORPORATED)
)
 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 - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Billy J. Mosely (Webster Law Offices), Pikeville, 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 - Denial of Benefits (02-BLA-5189) of Administrative Law Judge Daniel J. Roketenetz 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 adjudicated the claim pursuant to 20 C.F.R. Part 718, credited claimant with twenty-nine years of qualifying coal mine employment, and found that the evidence of record was insufficient

to establish either the existence of pneumoconiosis or total respiratory disability. Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in finding that the x-ray and medical opinion evidence did not establish the existence of pneumoconiosis. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, (the Director) has filed a letter indicating that he will not participate in this appeal.¹

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant first asserts that the administrative law judge erred in according greater weight to interpretations by dually qualified readers, arguing that "at no time has the Court stated that because a physician has the dual certification of 'B' Reader and Board Certified Radiologist, that his opinion should be granted greater weight than those of someone who is a 'B' Reader only." Claimant's Brief at 4. Claimant's argument is without merit.

The administrative law judge discussed eight interpretations of four x-rays. He found that three of these interpretations were positive, two of which were by B-readers, while five were negative, by Drs. Wiot and Sargent, dually qualified readers. The administrative law judge found that the existence of pneumoconiosis was not established by the x-ray evidence. Decision and Order at 6, 7. In making this finding, the administrative law judge correctly relied on the fact that the preponderance of the x-rays read by dually qualified board-certified, B-readers was negative for the existence of

¹ We affirm the administrative law judge's findings on the length of coal mine employment and at 20 C.F.R. §718.202(a)(2)-(3) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

pneumoconiosis. 20 C.F.R. §718.202(a)(1); *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*). Accordingly, the administrative law judge's finding that the existence of pneumoconiosis was not established at Section 718.202(a)(1) is affirmed.

Claimant next asserts that the administrative law judge erred in not finding the existence of pneumoconiosis established based on medical opinion evidence, asserting that the administrative law judge erred in according less weight to the opinions of Drs Baker and Paranthaman, diagnosing coal workers' pneumoconiosis, on the grounds that they based their opinions solely on x-ray when, in fact, their opinions were also based on several other factors. *See* Decision and Order at 10, 11; Claimant's Exhibits 1, 2. Further, claimant asserts that the opinions of Drs. Baker and Paranthaman are supported by the opinion of Dr. Hussain, who also based his opinion on a number of factors, including examination, testimony, and x-rays. Director's Exhibit 9.

However, as both Drs. Baker and Parathaman specifically linked their diagnoses of pneumoconiosis to their x-ray findings of the disease, the administrative law judge permissibly found their opinions to be no more than restatements of x-rays, and, as such, inadequate to establish the existence of pneumoconiosis at Section 718.202(a)(4). *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985). Accordingly, as claimant has not otherwise challenged the administrative law judge's finding at Section 718.202(a)(4), it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, the Decision and Order – Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge