BRB No. 04-0961 BLA

ELDES BROWN, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MANALAPAN MINING COMPANY	)	DATE ISSUED: 06/13/2005
	)	
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 of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

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

W. Stacy Huff (Huff Law Office), Harlan, Kentucky, for employer.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2002-BLA-5350) of Administrative Law Judge Mollie W. Neal 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). Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and noted employer's concession

that claimant established sixteen years of coal mine employment.[1] On the merits, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in not finding the existence of pneumoconiosis established by x-ray evidence at Section 718.202(a)(1). Claimant also argues that, since the administrative law judge rejected Dr. Hussain's opinion as neither well-reasoned nor well-documented, the Director, Office of Workers' Compensation Programs, (the Director) has failed to provide him with a complete, credible pulmonary evaluation sufficient to substantiate his claim under the Act. 30 U.S.C. §923(b). Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director responds that claimant was provided a complete, credible pulmonary evaluation as required by the Act, pursuant to Section 413(b), 30 U.S.C. §923(b). Specifically, the Director contends that Dr. Hussain did provide claimant a complete, credible pulmonary evaluation as he addressed each required element of entitlement and that the administrative law judge rationally found Dr. Hussain's opinion to be outweighed by the contrary opinion of Dr. Dahhan.

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 and 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*).

Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge "need not defer to a doctor with superior qualifications" and "need not accept as conclusive the numerical superiority of x-ray interpretations." Claimant's Brief at 3. Claimant further suggests that the administrative law judge "may have" improperly selectively analyzed the x-ray evidence of record. Claimant's Brief at 3. There is no

[1] The record indicates that claimant filed an application for benefits on March 9, 2001. Director's Exhibit 2.

merit in these assertions, however. The administrative law judge rationally credited the greater number of negative readings from those physicians with specialized qualifications in the field of radiology. Decision and Order at 4-5; Employer's Exhibits 1, 2; Director's Exhibits 11, 12; 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. 1995); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985).[2] This determination is supported by the record since all of the negative interpretations were submitted by physicians who were either Board-certified radiologists, or B-readers, while the single positive reading was interpreted by a physician with no specialized radiological qualifications.[3] Employer's Exhibits 1, 2; Director's Exhibits 11, 12. Moreover, there is no evidence to support claimant's suggestion that the administrative law judge selectively analyzed the x-ray evidence of record. Accordingly, the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1) is affirmed.

Claimant also contends that the administrative law judge's failure to credit Dr. Hussain's diagnosis of pneumoconiosis because he found the opinion to be neither well-reasoned nor well documented means that the Director has failed to discharge his obligation of providing claimant with a credible pulmonary evaluation. Section 413(b) requires the Director to provide claimant with a complete, credible, pulmonary evaluation which addresses each required element of entitlement, thereby affording claimant the opportunity to substantiate his claim. 30 U.S.C. §923(b). Dr. Hussain's opinion addresses each requisite element of entitlement. The administrative law judge however afforded it less weight than Dr. Dahhan's opinion because he found Dr. Dahhan's opinion

[2] Since the miner's last coal mine employment took place in the Commonwealth of Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. Director's Exhibit 4; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

[3] A B-reader is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination by the National Institute of Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135 n.16, 11 BLR 2-1 n.16 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A Board-certified radiologist is a physician who is certified in radiology or diagnostic roentgenology by the American Board of Radiology, Inc. or the American Osteopathic Association. 20 C.F.R. §718.202(a)(ii)(C).

better reasoned. Decision and Order at 7. Thus, since Dr. Hussain addressed the elements of entitlement, the Director's obligation to provide claimant with a complete, credible pulmonary evaluation has been discharged. 30 U.S.C. §923(b); Employer's Exhibit 1; Director's Exhibit 11; Decision and Order at 6-7; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *Cline v. Director, OWCP*, 917 F.2d 9, 14 BLR 2-102 (8th Cir. 1990); *Barnes v. ICO Corp.*, 31 F.3d 678, 682 (8th Cir. 1994) (it is claimant's duty, not the Director's, to establish his eligibility for benefits); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1994). Moreover, the administrative law judge permissibly accorded determinative weight to Dr. Dahhan's opinion in finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(4), as he found it to be well documented and reasoned, better supported by the objective evidence of record, and based on more extensive medical data, than was Dr. Hussain's opinion. Employer's Exhibit 1; Decision and Order at 7; *Cornett v. Benham Coal Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR 1-149; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); *Morgan v. Bethlehem Steel Corp.*, 7 BLR 1-226 (1984); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); *Winters v. Director, OWCP*, 6 BLR 1-877 (1984).

Claimant also contends that total disability due to pneumoconiosis has been established because pneumoconiosis is a progressive disease, and "during the considerable amount of time that has passed since the initial diagnosis of pneumoconiosis the claimant's condition has worsened, thus adversely affecting his ability to perform his usual coal mine work or comparable and gainful work." Claimant's Brief at 4. There is no merit to this contention however, because claimant bears the burden of establishing, by competent evidence, a totally disabling respiratory impairment. 20 C.F.R. §725.477(b); *White v. New White Coal Co.*, 23 BLR 1-1, 1-7 n.8 (2004); *see Ondecko*, 512 U.S. 267, 18 BLR 2A-1.

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *Clark*, 12 BLR 1-149. Since substantial evidence supports the administrative law judge's finding that claimant has failed to establish the presence of coal workers' pneumoconiosis at Section 718.202(a), an essential element of entitlement, we must affirm the denial of benefits. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Accordingly, the Decision and Order of the administrative law judge 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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JUDITH S. BOGGS
Administrative Appeals Judge