BRB No. 05-0841 BLA

JOSEPH C. MEYERS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 06/27/2006
	)	
	)	
and	)	
	)	
SUN COAL COMPANY, INCORPORATED c/o ACORDIA EMPLOYERS SERVICE	)	
	)	
	)	
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 – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd, PLLC), Washington, D.C., for employer.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 – Denial of Benefits (03-BLA-5876) of Administrative Law Judge Daniel J. Roketenetz rendered on a subsequent 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 10.85 years of coal mine employment, the administrative law judge found that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Consequently, the administrative law judge found that the newly submitted evidence was insufficient to establish a change in an applicable condition of entitlement since the date upon which claimant's prior claim became final pursuant to 20 C.F.R. §725.309(d). 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), or total disability pursuant to 20 C.F.R. §718.204(b). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim, as required by the Act. Employer responds in support of the administrative law judge's denial of benefits. The Director responds, requesting that the Board reject claimant's request that the case be remanded to provide claimant with a complete, credible pulmonary evaluation.

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).

[1] Claimant filed his first claim on August 25, 1993, which was denied by the district director on February 2, 1994, because the existence of pneumoconiosis, that it arose out of coal mine employment, and total disability due to pneumoconiosis were not established. Director's Exhibit 1. The district director affirmed his denial on May 9, 1994, on the same bases. *Id.* Upon claimant's request for a hearing, Judge Teitler denied benefits on June 29, 1995, because the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *Id.* The Board affirmed Judge Teitler's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) pursuant to Section 718.202(a)(1)-(4), and thus his denial of benefits. *Meyers v. Shamrock Coal Co., Inc.*, BRB No. 95-1836 BLA (Jan. 29, 1996)(unpub.).

Claimant first contends that the administrative law judge erred in finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).[2] The relevant evidence consists of interpretations of four x-rays taken on October 22, 2003; January 9, 2002; September 27, 2001; and June 16, 2001.[3] Director's Exhibits 15, 17-20; Employer's Exhibits 1, 9; Claimant's Exhibit 3. In considering the x-ray evidence, the administrative law judge acted within his discretion in crediting Dr. Alexander's positive interpretation of the 2002 x-ray over Dr. Dahhan's negative interpretation of this film, based upon Dr. Alexander's dual qualifications as a Board-certified radiologist and B reader. *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); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 7. Similarly, the administrative law judge acted within his discretion in crediting Dr. Hayes's negative interpretation of the September 27, 2001 x-ray over Dr. Simpao's positive interpretation, based upon Dr. Hayes's dual qualifications. *Id.* The administrative law judge also acted within his discretion in crediting Dr. Wheeler's negative interpretation of the June 16, 2001 x-ray over Dr. Baker's positive interpretation, based upon Dr. Wheeler's dual qualifications. The only other x-ray interpretation of record is negative for pneumoconiosis. Based on his consideration of the number of positive and negative interpretations of each x-ray and the qualifications of the x-ray readers, the administrative law judge rationally found that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *Staton; supra; Woodward; supra; Sheckler, supra*; Decision and Order at 7-8; Director's Exhibits 15, 17-20; Employer's Exhibits 1, 9; Claimant's Exhibit 3. Consequently, we affirm the administrative law judge's finding that the newly submitted

[2] 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), they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 8.

[3] Dr. Broudy, a B reader, interpreted claimant's October 22, 2003, x-ray as negative for pneumoconiosis. Employer's Exhibit 1. Although Dr. Dahhan, a B reader, interpreted claimant's January 9, 2002, x-ray as negative for pneumoconiosis, Employer's Exhibit 9, Dr. Alexander, a Board-certified radiologist and B reader, interpreted this x-ray as positive for the disease. Claimant's Exhibit 3. Although Dr. Simpao, who has no radiological qualifications, interpreted claimant's September 27, 2001, x-ray as positive for pneumoconiosis, Director's Exhibit 17, Dr. Hayes, a Board-certified radiologist and B reader, interpreted this x-ray as negative for the disease. Director's Exhibit 20. While Dr. Baker, who has no radiological qualifications, interpreted claimant's June 16, 2001, x-ray as positive for pneumoconiosis, Director's Exhibit 15, Dr. Wheeler, a Board-certified radiologist and B reader, interpreted this x-ray as negative for the disease. Director's Exhibit 19.

x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).[4]

Claimant also contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Specifically, claimant argues that the administrative law judge erred in finding that Dr. Baker's opinion of pneumoconiosis was not reasoned because it was based only on a positive x-ray interpretation that the administrative law judge found was contrary to the weight of the evidence, and because the record contains subsequent negative x-rays. In a report dated June 16, 2001, Dr. Baker diagnosed coal workers' pneumoconiosis, 1/0, based on an abnormal x-ray and significant history of dust exposure. Director's Exhibit 15 (Dr. Baker's Report at 2). Dr. Baker recorded an eleven and one-half year coal mine employment history, reported that claimant is a nonsmoker, and obtained a pulmonary function study indicating a mild obstructive ventilatory defect and normal blood gas study results.

Contrary to claimant's contention, the administrative law judge rationally found Dr. Baker's diagnosis of clinical pneumoconiosis was not well-reasoned or well-documented because it was based only on an abnormal chest x-ray and coal dust exposure history. *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); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); Decision and Order at 12; Director's Exhibit 15. Although claimant asserts that Dr. Baker's opinion of coal workers' (clinical) pneumoconiosis was also based on his physical examination of claimant, pulmonary function and blood gas studies, and smoking history, in addition to a positive chest x-ray and coal dust exposure history, Dr. Baker explicitly stated that his diagnosis of coal workers' pneumoconiosis was based on an abnormal x-ray and significant history of dust exposure. Director's Exhibit 15 (Dr. Baker's Report at 2). Moreover, the administrative law judge rationally found that Dr. Baker's diagnosis of legal pneumoconiosis was not well-reasoned or well-documented because the physician failed to explain how the results of his objective testing might have impacted his diagnosis of pneumoconiosis. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Decision and Order at 12; Director's Exhibit 15. Consequently, we affirm the administrative law judge's treatment of Dr. Baker's opinion at Section 718.202(a)(4). As claimant raises no other argument at Section 718.202(a)(4), the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis thereunder is affirmed.

[4] We reject claimant's assertion that the administrative law judge "may have selectively analyzed the x-ray evidence" as claimant has provided no support for his assertion. Claimant's Brief at 3.

Claimant further contends that the Director failed to fulfill his statutory obligation to provide claimant with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required under Section 413(b) of the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.401, 725.405(b); *see Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *Pettry v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*). Claimant argues that the Director failed to provide him with a credible pulmonary evaluation in view of the fact that the administrative law judge found Dr. Simpao's report neither well-reasoned nor well-documented with respect to Section 718.202(a)(4). In the instant case, claimant selected Dr. Simpao to perform his Department of Labor-sponsored pulmonary evaluation. Director's Exhibit 12. In a report dated September 27, 2001, Dr. Simpao diagnosed coal workers' pneumoconiosis 1/1, and performed a chest x-ray, pulmonary function and blood gas studies and electrocardiogram, and recorded claimant's coal mine employment and smoking histories. Director's Exhibit 17. In his analysis of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge rationally found that Dr. Simpao's diagnosis of pneumoconiosis was not well-reasoned or well-documented because it was based on a positive x-ray which had been re-read as negative, by a higher qualified physician, and because Dr. Simpao did not clearly explain how his physical findings and symptomatology supported a finding of pneumoconiosis. *Cornett, supra*; *Worhach, supra*; *Clark, supra*; *Taylor, supra*; Decision and Order at 13; Director's Exhibit 17. As the Director correctly asserts, the administrative law judge's finding that Dr. Simpao's opinion of clinical pneumoconiosis was not well-reasoned or well-documented on the above bases does not render Dr. Simpao's opinion not complete or not credible, since the Director is not required to provide claimant with a dispositive medical evaluation. Consequently, we reject claimant's contention that the Director failed to provide him with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim.

In light of our affirmance of the administrative law judge's finding that the newly submitted evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), the element of entitlement previously adjudicated against claimant,[5] we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Consequently, we need not address claimant's remaining contentions regarding the administrative law judge's finding that the evidence is insufficient to establish total disability at Section 718.204(b). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[5] The Board previously affirmed Judge Teitler's denial of claimant's initial claim because the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *Meyers v. Shamrock Coal Co., Inc.*, BRB No. 95-1836 BLA (Jan. 29, 1996)(unpub.); *see* n. 1, *supra*.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge