BRB No. 05-1001 BLA

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| DARRELL RAY CURTIS | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| PEABODY COAL COMPANY | ) | DATE ISSUED: 06/20/2006 |
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| 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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Elizabeth Ashley Bruce (Bruce Law Firm), Greenville, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order-Denial of Benefits (04-BLA-5705) of Administrative Law Judge Robert L. Hillyard rendered 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, September 6, 2002, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and found that claimant established twenty-five years of coal mine employment. While noting that employer conceded the existence of total disability, Decision and Order at 2 n.3; Hearing Transcript at 10, the administrative law judge found that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge found, therefore, that claimant could not establish that

pneumoconiosis arose out of coal mine employment or that total disability was due to pneumoconiosis. 20 C.F.R. §§718.203(b), 718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge should have found the existence of pneumoconiosis established based on the x-ray and medical opinion evidence and should have found that the medical opinion evidence established that pneumoconiosis arose out of coal mine employment and that total disability was due to 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.

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 & Grills Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 718.202(a)(1), claimant argues that the administrative law judge should have found that the x-ray evidence established the existence of pneumoconiosis because there were five positive readings and four negative readings. Claimant asserts that the administrative law judge erred by finding the readings of the February 13, 2003 x-ray to be inconclusive, inasmuch as the x-ray was read positive by Drs. Simpao and Brandon, both Board-certified radiologists and B-readers, while it was read negative only once. Contrary to claimant's argument, however, the administrative law judge permissibly found this x-ray to be inconclusive for the existence of pneumoconiosis as equally qualified readers, *i.e.*, Board-certified, B-readers, read it positive and negative, and although Dr. Simpao read it as positive, he had no special radiological qualifications. Decision and Order at 4-5, 8-9; Claimant's Exhibit 1; Employer's Exhibit 1; Director's Exhibit 8; *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985). Claimant also asserts that the administrative law judge erred by finding that Dr. O'Bryan's reading of the June 24, 2003 was negative for the presence of pneumoconiosis, inasmuch as Dr. O'Bryan stated that the x-ray revealed some pneumoconiosis and classified the x-ray as 0/1. Contrary to claimant's argument, however, a reading of 0/1 does not constitute a reading showing the existence of pneumoconiosis. Decision and Order at 9; Director's Exhibit 16; 20 C.F.R. §§718.102(b), 718.202(a)(1); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Canton v. Rochester & Pittsburgh Coal Co.*, 8 BLR 1-475 (1986); *Stanford v. Director, OWCP*, 7

BLR 1-541 (1984); *Preston v. Director, OWCP*, 6 BLR 1-1229 (1984).[1] Accordingly, we hold that the administrative law judge rationally credited the greater number of negative readings from those physicians with superior qualifications in the field of radiology to find that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1). Decision and Order at 4-5, 8-9; Claimant's Exhibits 1, 4; Employers Exhibits 1, 3, 6; Director's Exhibits 8, 16; 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)(administrative factfinders simply cannot consider the quantity of evidence alone, without reference to a difference in the qualifications of the readers); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Clark*, 12 BLR 1-149; *Dixon*, 8 BLR 1-344.[2]

Claimant also contends that the administrative law judge should have found the existence of pneumoconiosis established pursuant to Section 718.202(a)(4) based on the opinions of Drs. Baker, Houser, and Simpao, all of whom diagnosed the presence of the disease. Specifically, claimant contends that the administrative law judge erred by finding that Dr. Baker's opinion, finding the existence of both clinical and legal pneumoconiosis, was neither well reasoned nor well documented inasmuch as the opinion was based on examination, employment and smoking histories, symptomatology, and the results of pulmonary function study and x-ray. Claimant also contends that Dr. Baker is a specialist in pulmonary medicine and an examining physician.

In addition, claimant contends that the administrative law judge erred by according little weight to Dr. Houser's opinion, that claimant had both 1/1 pneumoconiosis and a respiratory impairment due to both cigarette smoking and coal mine employment inasmuch as Dr. Houser, a pulmonary specialist and claimant's treating physician, *i.e.*, head of respiratory therapy at Deaconess Hospital, with extensive experience in treating pulmonary diseases, performed a comprehensive examination and fully explained his diagnosis.

Regarding Dr. Simpao's opinion, claimant contends that the administrative law judge erred in according it little weight for the reason that Dr. Simpao's positive x-ray reading was reread as negative by a more qualified reader, inasmuch as, claimant argues,

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[1] Section 718.102(b) provides that a chest x-ray classified as Category 0/1 does not constitute evidence of pneumoconiosis. 20 C.F.R. §718.102(b).

[2] Because the miner last worked in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

the x-ray was also read positive by a similarly qualified reader, and Dr. Simpao's opinion was adequately supported by examination, history, and objective test results.

Finally, claimant contends that the administrative law judge erred in finding that Dr. O'Bryan's opinion did not establish the existence of pneumoconiosis as Dr. O'Bryan noted that the x-ray he classified as 0/1 was not completely negative and that the parenchymal abnormalities seen on the x-ray were consistent with pneumoconiosis.

We find no merit in claimant's contentions. Pursuant to Section 718.202(a)(4), the administrative law judge permissibly gave little weight to Dr. Baker's diagnosis of clinical pneumoconiosis as it was based solely on claimant's positive x-ray reading and his history of coal dust exposure and little weight to his diagnosis of legal pneumoconiosis because he found it to be equivocal as Dr. Baker stated that coal dust related complications "may" be acting in synergy with cigarette induced conditions. Decision and Order at 10-11; Claimant's Exhibit 3; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985).

Similarly, the administrative law judge permissibly accorded little weight to Dr. Houser's diagnosis of clinical pneumoconiosis as it also was based solely on a positive x-ray reading and claimant's coal mine employment history, and little weight to the doctor's diagnosis of legal pneumoconiosis as it was inadequately explained. *Cornett*, 227 F.3d 569, 22 BLR 2-107, *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1996); *Worhach*, 17 BLR 1-105, *Clark*, 12 BLR 1-149; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988) (*en banc*); *Taylor*, 8 BLR 1-405. Moreover, contrary to claimant's contention, the administrative law judge was not required to credit Dr. Houser's opinion based on his status as claimant's treating physician or his experience in the field of pulmonary medicine when he found his opinion inadequately reasoned. Decision and Order at 9-12; Claimant's Exhibit 2; Employer's Exhibit 4; 20 C.F.R. §718.104(d)(5); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003).

Further, we reject claimant's arguments regarding Dr. Simpao's opinion. The administrative law judge permissibly found Dr. Simpao's opinion to be unreasoned as Dr. Simpao failed to explain how his findings supported his diagnosis, and the x-ray he read as positive was reread negative by a better qualified physician. Decision and Order at 12-13; Director's Exhibit 8; *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Clark*, 12 BLR 1-149; *Tackett*, 12 BLR 1-11; *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Winters v. Director, OWCP*, 6 BLR 1-871, 1-881 n.4 (1986).

Moreover, contrary to claimant's argument, Dr. O'Bryan's x-ray reading classified as 0/1, with parenchymal abnormalities consistent with pneumoconiosis does not constitute a medical opinion sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), and the administrative law judge acted within his discretion in crediting the opinion of Dr. O'Bryan, a board-certified pulmonologist, that claimant did not have either clinical or legal pneumoconiosis. Decision and Order at 9-13; Director's Exhibit 16; *Cornett*, 227 F.3d 569, 22 BLR 2-107; *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); *Taylor*, 8 BLR 1-405.

We, therefore, affirm the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). Because claimant has failed to establish the presence of pneumoconiosis, an essential element of entitlement, we need not address claimant's arguments that the evidence also established that pneumoconiosis arose out of coal mine employment and that total disability was due to pneumoconiosis. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Accordingly, the administrative law judge's Decision and Order-Denial of 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