

BRB No. 05-1003 BLA

WILLIAM ROBERT BENTLEY)	
)	
Claimant-Respondent)	
)	
v.)	
)	
SHIPYARD RIVER COAL TERMINAL)	DATE ISSUED: 06/12/2006
COMPANY)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer.

Before: SMITH, McGRANERY, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (03-BLA-6004) of Administrative Law Judge Pamela Lakes Wood 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, March 19, 2001, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and noted that the parties stipulated that claimant had twenty-four years of coal mine employment. The administrative law judge found that the evidence of record was sufficient to establish the existence of complicated pneumoconiosis, and that it arose out of coal mine employment. The administrative law judge, therefore, found that claimant was entitled to the irrebuttable presumption of totally disabling coal workers' pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304. Accordingly, benefits were awarded.

On appeal, employer argues that the administrative law judge erred in finding the existence of complicated pneumoconiosis established based on x-ray and medical opinion evidence.¹ Claimant has not participated in this appeal. The Director Office of Workers' Compensation Programs, (the Director) has filed a letter stating 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'Keefe 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*). If claimant establishes the existence of complicated pneumoconiosis he is entitled to the irrebuttable presumption that his pneumoconiosis is totally disabling. 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304.

Employer asserts first that the administrative law judge erred in finding the existence of complicated pneumoconiosis established based on x-ray evidence. Specifically, employer argues that the administrative law judge erred in according greater weight to the diagnoses of complicated pneumoconiosis made by Dr. Patel based on his readings of the July 26, 2001 and December 22, 2003 x-ray films as these x-rays were found to be of poor quality, over readings of other x-rays which did not diagnose the existene of complicated pneumoconiosis and were of better quality. While employer acknowledges that the regulations do not require all x-ray films to be of quality "1" to meet the quality standards at 20 C.F.R. §718.102, employer nonetheless argues that the administrative law judge should consider the relative quality of x-ray films in considering them and should assign less weight to films which are of lesser quality.²

¹ As the record contains no biopsy or autopsy evidence, Section 718.304(b), is inapplicable in this case. 20 C.F.R. §718.304(b).

² The form for designating an x-ray reading provides a box to check the quality of the x-ray film as grade 1, 2, 3, or U/R. Films graded 1, 2, and 3 are deemed to be of acceptable quality, while a designation of U/R is deemed to be of inferior quality. DOL Form CM-133.

In evaluating the x-ray evidence, the administrative law judge found that the March 21, 2000 and June 30, 2001 x-rays were both interpreted negative for the existence of pneumoconiosis by B-readers, the July 26, 2001 x-ray was read as showing simple pneumoconiosis by one dually, qualified reader and as showing complicated pneumoconiosis by a different, dually qualified reader, while the December 22, 2003 x-ray was read as positive for the existence of both simple and complicated pneumoconiosis by a single, dually qualified reader, Dr. Patel. Thus, the administrative law judge concluded that because pneumoconiosis is a progressive and irreversible disease, it would be appropriate to accord greater weight to the more recent evidence, especially in light of the significant time that had lapsed, *i.e.*, two and one half years, between the negative 2001 x-rays and the 2003 x-ray interpreted positive for both simple and complicated pneumoconiosis. Accordingly, the administrative law judge credited Dr. Patel's diagnosis of complicated pneumoconiosis based on the December 22, 2003 x-ray, and found that the x-ray evidence tended to preponderate in favor of complicated pneumoconiosis.

Further, considering the December 2003 x-ray, the administrative law judge noted that Dr. Patel characterized the x-ray as quality "2", and that Dr. Rasmussen, who was aware of the quality assigned to it by Dr. Patel, nevertheless expressed confidence in Dr. Patel's reading. As to the July 26, 2001 x-ray which was read as showing, on the one hand, simple pneumoconiosis, and the other, complicated pneumoconiosis, the administrative law judge noted that both Drs. Patel and Halbert, dually qualified readers, found it to be a quality "2", while Dr. Sargent, was the only dually qualified reader to classify it as quality "3". In addressing Dr. Sargent's quality reading, the administrative law judge noted that Dr. Sargent classified the x-ray as quality "3" because it was "overexposed" while on deposition Dr. Rasmussen testified that "underexposed", not "overexposed" films, tend to make any opacities present more prominent. Decision and Order at 13. Thus, having considered the quality of the films, the administrative law judge concluded that she was "reluctant to second guess Drs. Patel and Halbert and discredit their readings...when these two readers found the x-rays to be readable and there has been no showing that these highly qualified readers were unable to take the deficiencies noted into account in making their readings." Decision and Order at 14. The administrative law judge further noted that Dr. Patel had found only "slight" lateral underexposure of the December 2003 x-ray and that no physician has suggested that the x-ray was not of good quality. On balance, therefore, the administrative law judge concluded that the x-ray evidence supported a finding of complicated pneumoconiosis.

As the regulations do not require that the x-ray readings be of the highest quality in order to establish the existence of pneumoconiosis, only that they be readable, and the administrative law judge may credit the most recent positive x-ray evidence as most reliable and may credit the readings of physicians with superior qualifications in the field of radiology, the administrative law judge's finding that the x-ray evidence established

the existence of complicated pneumoconiosis in this case was proper. Decision and Order at 3-4, 12-14; Employer's Exhibit 2; Claimant's Exhibit 1; Director's Exhibits 13-18; 20 C.F.R. §§718.102(a), 718.202(a)(1); *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(*en banc*); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Gober v. Reading Anthracite Co.*, 12 BLR 1-67 (1988); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Preston v. Director, OWCP*, 6 BLR 1-1229 (1984).

Employer next contends that the administrative law judge erred in crediting the opinion of Dr. Rasmussen as his finding of complicated pneumoconiosis was based solely on Dr. Patel's reading of the July 2001 x-ray and not on any testing or clinical finding Dr. Rasmussen made himself. Employer contends, in fact, that Dr. Rasmussen's own reading of the July 2001 x-ray was for simple pneumoconiosis only, like readings by Drs. Dahhan, Broudy, and Fino. Employer concludes, therefore, that it was error for the administrative law judge to accept the opinion of Dr. Rasmussen and reject the opinions of Drs. Dahhan, Broudy, and Fino.

In evaluating the doctors' opinions, the administrative law judge accorded less weight to the opinions of Drs. Dahhan, Broudy and Fino, who failed to diagnose complicated pneumoconiosis, because each doctor had relied upon his own x-ray interpretation and because she found the weight of the x-ray evidence established the existence of complicated pneumoconiosis. She accorded greater weight to the opinion of Dr. Rasmussen because Dr. Rasmussen explained why it is reasonable to rely on Dr. Patel's most recent x-ray reading, which Dr. Rasmussen discussed in the context of the other evidence of record; the administrative law judge found his discussion of the medical evidence was highly persuasive. This was permissible. Decision and Order at 6-8, 14-15; Employer's Exhibit 2; Claimant's Exhibit 1; Director's Exhibits 8, 16-18; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, on weighing the medical opinion evidence with the x-ray readings of record, the administrative law judge found that the existence of complicated pneumoconiosis was established based on the finding of complicated pneumoconiosis on the most recent x-ray as supported by Dr. Rasmussen's opinion, explaining the credibility of that interpretation. Decision and Order at 15. As substantial evidence supports the administrative law judge's finding, it is affirmed. We therefore, affirm the administrative law judge's finding that claimant was entitled to the irrebuttable presumption that his pneumoconiosis was totally disabling and his finding that claimant was entitled to benefits. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Circuit 2000); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick*

v. Consolidated Coal Co., 16 BLR 1-31 (1991)(*en banc*); see *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999).

Accordingly, the administrative law judge's Decision and Order Granting Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge