BRB Nos. 03-0408 BLA
and 03-0408 BLA-A

JOE NAPIER	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 03/08/2004
	)	
and	)	
	)	
JAMES RIVER COAL COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

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

Helen H. Cox (Howard 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: McGRANERY, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order (02-BLA-5188) of Administrative Law Judge Joseph E. Kane 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).[1] The administrative law judge credited claimant with twenty-two years of coal mine employment based on the parties' stipulation and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §§718.204(b)(2)(i)-(iv) and 718.204(b)(2) overall. Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §§718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. On cross-appeal, employer contends that the limitations on the development of medical evidence at 20 C.F.R. §725.414 are invalid. Employer also contends, assuming *arguendo* that 20 C.F.R. §725.414 is valid, that the administrative law judge erred in his application of this regulation. The Director, Office of Workers' Compensation Programs (the Director), urges the Board to reject employer's contention that 20 C.F.R. §725.414 is invalid. However, the Director contends that the administrative law judge erred in excluding some of employer's evidence without providing employer with an opportunity to demonstrate good cause for its submission or to select which pieces of evidence it wished to keep in the record.[2]

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

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]Since the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). We disagree. Of the five x-ray interpretations of record, three readings are negative for pneumoconiosis, Director's Exhibits 12, 13; Employer's Exhibits 2, 5, and two readings are positive,[3] Director's Exhibit 10; Claimant's Exhibit 1. In addition to noting the numerical superiority of the negative x-ray readings, the administrative law judge also considered the qualifications of the various physicians.[4] *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994). The administrative law judge specifically stated:

> The majority of x-ray interpretations are negative for pneumoconiosis. Beyond sheer numbers, the negative interpretations are also proffered by physicians with superior credentials as both Drs. Wiot and Vuskovich are "B" readers and Dr. Wiot is a [B]oard certified radiologist.

Decision and Order at 12. Thus, we reject claimant's assertions that the administrative law judge erred by relying almost solely on the numerical superiority of the negative x-ray readings by physicians with superior credentials. Moreover, we reject as unsubstantiated, claimant's assertion that the administrative law judge selectively analyzed the x-ray evidence of record. Since it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).

---

[3]Dr. Baker read the May 15, 2002 x-ray as positive for pneumoconiosis, Claimant's Exhibit 1, and Dr. Hussain read the June 20, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 10. In contrast, Dr. Wiot reread the June 20, 2001 x-ray as negative for pneumoconiosis. Director's Exhibit 12; Employer's Exhibit 5. Further, Drs. Wiot and Vuskovich each separately read the July 27, 2001 x-ray as negative for pneumoconiosis. Director's Exhibit 13; Employer's Exhibit 2.

[4]Whereas Dr. Vuskovich is a B reader and Dr. Wiot is a B reader and a Board-certified radiologist, Drs. Baker and Hussain are not B readers or Board-certified radiologists. Although Dr. Baker's "Professional Qualifications" indicate that Dr. Baker was a certified B reader from February 1, 1997 to January 31, 2001, they do not indicate that Dr. Baker was a certified B reader after that period of time. Claimant's Exhibit 1. On the May 15, 2002 x-ray form, Dr. Baker indicated that he was not a B reader. *Id.* Similarly, Dr. Hussain indicated that he was not a B reader on the June 20, 2001 x-ray form. Director's Exhibit 10.

Next, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Specifically, claimant asserts that the administrative law judge erred in discrediting the opinions of Drs. Baker and Hussain. We disagree. Whereas Drs. Baker and Hussain opined that claimant suffers from pneumoconiosis, Director's Exhibit 10; Claimant's Exhibit 1, Dr. Vuskovich opined that claimant does not suffer from pneumoconiosis,[5] Employer's Exhibit 2. The administrative law judge permissibly discredited the opinions of Drs. Baker and Hussain because they are not reasoned. *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). The administrative law judge stated that "Drs. Hussain and Baker diagnosed clinical pneumoconiosis based upon [c]laimant's chest x-rays and coal dust exposure history." Decision and Order at 13. In a report dated May 15, 2002, Dr. Baker indicated that the rationale for his diagnosis of pneumoconiosis was claimant's positive x-ray interpretation and work history. Director's Exhibit 10. Similarly, in a report dated June 20, 2001, Dr. Hussain indicated that the rationale for his diagnosis of pneumoconiosis was claimant's positive x-ray interpretation and work history. Claimant's Exhibit 1. Although the reports of Drs. Baker and Hussain reflect that the physicians examined claimant and obtained pulmonary function studies and arterial blood gas studies, the physicians did not explain how the examination findings or objective tests supported a diagnosis of pneumoconiosis. Director's Exhibit 10; Claimant's Exhibit 1. As the record supports the administrative law judge's determination that the reports of Drs. Baker and Hussain are based on x-ray readings and coal mine employment histories and lacked sufficient discussion or analysis to support the diagnoses, the administrative law judge permissibly discredited these opinions at Section 718.202(a)(4). *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). Thus, we reject claimant's assertion that the administrative law judge erred in discrediting the opinions of Drs. Baker and Hussain. Since the administrative law judge permissibly discredited the only medical opinions of record that could establish the existence of pneumoconiosis, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, we hold that the administrative law judge

[5]Dr. Baker also diagnosed "[b]ronchitis – based on history." Claimant's Exhibit 1. The administrative law judge stated, "[a]s Dr. Baker did not diagnose *chronic* bronchitis, I do not find that his opinion diagnoses legal pneumoconiosis." Decision and Order at 14 (emphasis added). We hold that any error by the administrative law judge in discrediting Dr. Baker's opinion because the diagnosed condition is not chronic is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Dr. Baker did not opine that claimant's bronchitis is related to coal dust exposure. Claimant's Exhibit 1.

properly denied benefits under 20 C.F.R. Part 718.[6] *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge

[6]In view of our disposition of this case at 20 C.F.R. §718.202(a), we decline to address claimant's contentions regarding the administrative law judge's finding at 20 C.F.R. §718.204(b)(2)(iv) and employer's contentions raised in its cross-appeal. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).