BRB No. 04-0674 BLA

PAUL RAY WALDEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	
	)	DATE ISSUED: 03/24/2005
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 – Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Joseph Kelley (Monhollon & Kelley, P.S.C.), Madisonville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (03-BLA-5783) 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). In a Decision and Order dated April 29, 2004, the administrative law judge credited the miner with twenty years of coal mine employment,[1] and found that the evidence failed to establish the existence of

---

[1] The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of

pneumoconiosis at 20 C.F.R. §718.202(a) and failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence relevant to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4), and erred in his evaluation of the medical opinion evidence relevant to the issue of total disability causation at 20 C.F.R. §718.204(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Claimant initially contends the administrative law judge erred in evaluating the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). We disagree. Contrary to claimant's arguments, in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis, the administrative law judge properly considered both the quantity and the quality of the x-ray readings of record, and permissibly found that the four negative readings by Dr. Wiot, a B reader, Dr. Wheeler, a dually qualified B reader and Board-certified radiologist, Dr. O'Bryan, and Dr. Spitz, a B reader, outweigh the three positive

---

the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] The administrative law judge's findings of twenty years of coal mine employment and his findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) or (3) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

readings by Dr. Brandon and Dr. Whitehead, both dually qualified readers, and Dr. Baker, whose qualifications are not in the record. *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon.*); *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); Claimant's Exhibits 2, 3; Director's Exhibits 13-15; Employer's Exhibits 1, 7; Decision and Order at 10. Consequently, we reject claimant's contentions that the administrative law judge improperly weighed the x-ray evidence of record, and affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Claimant also challenges the administrative law judge's evaluation of the medical opinion evidence regarding the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), specifically asserting that the administrative law judge erred in failing to accord greater weight to the opinions of Drs. Baker and Houser. We disagree. In considering the medical opinion evidence, the administrative law judge properly found that Drs. Baker and Houser diagnosed the existence of pneumoconiosis, while Drs. O'Bryan and Fino found no evidence of the disease. Claimant's Exhibit 4; Director's Exhibits 13, 14; Employer's Exhibits 2, 5, 6; Decision and Order at 11-13. The administrative law judge permissibly concluded that the opinions of Drs. Baker and Houser, who listed no medical specialty credentials, were outweighed by the contrary opinions of Dr. O'Bryan, a Board-certified internist, pulmonologist and critical care specialist, and Dr. Fino, a Board-certified internist, pulmonologist and a B reader, who provided well reasoned opinions based upon the objective medical evidence of record. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984); s*ee Rankin v. Keystone Coal Mining Co.*, 8 BLR 1-54 (1985)(it is the burden of the parties to establish the credentials of their experts); Decision and Order at 14.

It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility. *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). Because the administrative law judge examined each medical opinion in light of the qualifications of the physician, the studies conducted and the objective indications upon which the medical opinion or conclusion is based, *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999), *Rowe*, 710 F.2d at 255, 5 BLR at 2-103, and explained whether the diagnoses contained therein constituted reasoned medical judgments under Section 718.202(a)(4), we affirm the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-120 (6th Cir. 2000). Consequently, we affirm the administrative law judge's finding that the existence of pneumoconiosis, an essential element of entitlement, was not established

pursuant to 20 C.F.R. §718.202(a). We therefore affirm the administrative law judge's denial of benefits.

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

BETTY JEAN HALL
Administrative Appeals Judge