

BRB No. 05-0981 BLA

HERMAN PRICE)
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 Claimant-Petitioner)
)
 v.)
)
 IKERD BANDY COMPANY,) DATE ISSUED: 03/30/2006
 INCORPORATED)
)
 and)
)
 ZURICH AMERICAN INSURANCE)
 GROUP)
)
 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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer and carrier.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 (2004-BLA-5716) of Administrative Law Judge Robert L. Hillyard 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). The administrative law judge credited claimant with twenty years of qualifying coal mine employment, and adjudicated this claim, filed on April 9, 2002, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence of record was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's weighing of the evidence in finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), (4), or total respiratory disability pursuant to Section 718.204(b)(2)(iv). Claimant alternatively asserts that the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a complete, credible pulmonary evaluation as required pursuant to 30 U.S.C. §923(b), 20 C.F.R. §725.406(a), because the administrative law judge discounted the opinion of Dr. Simpao. Employer responds, urging affirmance of the denial of benefits. The Director has filed a limited response, urging the Board to reject claimant's argument that the Director failed to provide claimant with a pulmonary examination that complies with the requirements of Section 413(b) of the Act.¹

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.² 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).

¹ We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment and his finding that the evidence of record did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3) or total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mine industry in the Commonwealth of Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

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 entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Claimant initially challenges the administrative law judge's weighing of the x-ray evidence of record at Section 718.202(a)(1), arguing that the administrative law judge "relied almost solely on the qualifications of the physicians providing the x-ray interpretations," "placed substantial weight on the numerical superiority of x-ray interpretations," and "may have selectively analyzed" the evidence. Claimant's Brief at 3. Contrary to claimant's arguments, however, we can discern no error in the administrative law judge's weighing of this evidence. The administrative law judge accurately determined that films dated February 16, 2002 and July 22, 2002 were each read as positive for pneumoconiosis by a physician with no special radiological qualifications and reread as negative by a dually-qualified Board-certified radiologist and B reader, while films dated February 4, 2003 and January 24, 2005 were each read as negative by a B reader. Decision and Order at 4-5, 8-9; Director's Exhibits 9, 13, 24, 31; Employer's Exhibits 1, 3. Based on the preponderance of negative interpretations by the best qualified readers, the administrative law judge acted within his discretion in finding that the evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). Decision and Order at 8-9; *see 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); *White v. New White Coal Co.*, 23 BLR 1-1 (2004). The administrative law judge's findings are supported by substantial evidence, and thus are affirmed.

Claimant next maintains that the medical opinion of Dr. Baker is reasoned, documented, and sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), and that the administrative law judge should not have rejected the opinion for the reasons provided. Claimant's Brief at 4-5. Claimant's arguments are without merit, and essentially amount to a request to reweigh the evidence, which is beyond the Board's scope of review. *See Anderson*, 12 BLR 1-111.

In evaluating the conflicting medical opinions of record, the administrative law judge acknowledged Dr. Baker's credentials and properly found that Dr. Baker's diagnosis of clinical pneumoconiosis, based on a positive x-ray and claimant's history of coal dust exposure, merely constituted a restatement of an x-ray interpretation rather than a reasoned medical opinion sufficient to meet claimant's burden at Section 718.202(a)(4). Decision and Order at 7, 10-11; *see 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); *Anderson*, 12

BLR at 1-113. While Dr. Baker also diagnosed chronic bronchitis resulting from coal dust exposure which would, if credited, establish legal pneumoconiosis as defined at 20 C.F.R. §718.201(a)(2), the administrative law judge permissibly discounted the diagnosis because it was not based on objective evidence, but rather on claimant's self-reported history, and Dr. Baker failed to explain how coal dust exposure created the condition or how a normal chest evaluation was consistent with the diagnosis. Decision and Order at 11; Director's Exhibit 13; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge acted within his discretion in according greater weight to the conflicting opinions of employer's experts, Drs. Dahhan and Broudy, as the administrative law judge found that both opinions were well reasoned and supported by the objective medical evidence. Decision and Order at 11; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-149 (1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). As claimant has not identified any legal or factual error in the administrative law judge's discounting of the remaining medical opinion of record, *i.e.*, Dr. Simpao's diagnosis of pneumoconiosis, we affirm the administrative law judge's finding that the weight of the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as supported by substantial evidence. *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984).

Claimant next argues that, because the administrative law judge discounted Dr. Simpao's opinion, the Director violated his statutory duty to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim. Claimant's Brief at 5-6. We disagree. On its face, Dr. Simpao's opinion is complete, as the physician conducted a physical examination, recorded claimant's symptoms as well as his employment, medical and social histories, obtained x-rays, EKG, pulmonary function studies and blood gas studies, and addressed all of the elements of entitlement. Decision and Order at 7, 11; Director's Exhibit 9. The administrative law judge gave less weight to Dr. Simpao's diagnosis of pneumoconiosis because it was based in part upon a positive x-ray that was refuted by the negative interpretation of a better-qualified reader and outweighed by the x-ray evidence as a whole, and because Dr. Simpao failed to explain how claimant's EKG, abnormal blood gas results, physical findings or symptoms supported the diagnosis. *See* Decision and Order at 11; *Clark*, 12 BLR 1-149. In these circumstances, where the physician's pulmonary evaluation was complete, documented, and inherently credible, but his diagnosis of pneumoconiosis was found to be outweighed by the conflicting x-ray and medical opinion evidence of record, the Director's statutory obligation is discharged. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.406(a); *see generally Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Because claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits. *See*

Anderson, 12 BLR 1-111. Consequently, we need not reach claimant's arguments on the issue of total respiratory disability.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge