

BRB No. 07-0584 BLA

C.W.C.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY)	DATE ISSUED: 03/28/2008
)	
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 of Thomas M. Burke, Administrative Law Judge, United States Department of Labor

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd 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 (2004-BLA-6365) denying benefits of Administrative Law Judge Thomas M. Burke (the administrative law judge), 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). After finding that the claimant had twelve years of qualifying coal mine employment, the administrative law judge found that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total respiratory disability at 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), and in finding the medical opinion evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).¹ Additionally, claimant contends that, because the administrative law judge rejected Dr. Simpao's diagnosis of pneumoconiosis, the Director, Office of Workers' Compensation Programs (the Director), failed to provide claimant with a complete credible pulmonary evaluation as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §725.406(a). Employer responds, urging that the denial of benefits be affirmed. The Director responds, arguing that Dr. Simpao provided claimant with a complete, pulmonary evaluation as to pneumoconiosis.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.³ 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).

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

¹ The administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4), and total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed, as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² The Director, Office of Workers' Compensation Programs (the Director), further contends that even if he failed to provide claimant with an evaluation on the issue of total disability, remand of the case would not be necessary because the administrative law judge's finding that pneumoconiosis was not established would preclude an award of benefits.

³ We will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mine industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibits 3.

erred because he “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 discern no error in the administrative law judge’s weighing of this evidence. The administrative law judge found that the April 29, 2003 x-ray was read by Dr. Simpao, a physician with no radiological qualifications of record, as positive for pneumoconiosis. Director’s Exhibit 12. The administrative law judge found, however, that Dr. Hayes, a B reader and a Board-certified radiologist, interpreted the same x-ray as negative for pneumoconiosis. Director’s Exhibit 24. Additionally, the administrative law judge noted that a September 15, 2003 x-ray was interpreted as negative for pneumoconiosis by Dr. Broudy, a B reader, and an April 5, 2005 x-ray was interpreted as negative for pneumoconiosis by Dr. Repsher, a B reader. Director’s Exhibit 25; Employer’s Exhibit 2.

In considering the x-ray evidence, the administrative law judge properly accorded greater weight to the negative interpretation of the April 29, 2003 x-ray by Dr. Hayes because his qualifications were superior to those of Dr. Simpao and thus found that the April 29, 2003 x-ray was negative for pneumoconiosis. The administrative law judge found that the remaining x-rays of record were negative for pneumoconiosis. Therefore, based on the quality and quantity of the x-ray evidence, the administrative law judge correctly found that the x-ray evidence failed to establish pneumoconiosis pursuant to Section 718.202(a)(1). *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). Further, claimant has provided no support for his contention that the administrative law judge “may have selectively analyzed the x-ray evidence,” nor does the record support such a contention. *See White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The administrative law judge’s finding that the x-ray evidence failed to establish pneumoconiosis at Section 718.202(a)(1) is, therefore, affirmed.

Claimant also contends that the Director failed to provide him with a complete, credible pulmonary evaluation on the issue of pneumoconiosis, since the administrative law judge found (1) that Dr. Simpao’s report was based solely on an erroneous x-ray interpretation, and (2) that Dr. Simpao did not adequately explain his findings. As the Director contends, however, he is only required to provide claimant with a complete pulmonary examination, not a dispositive one. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*). Dr. Simpao conducted a physical examination, obtained pulmonary function study and blood gas study results, and took claimant’s symptoms and history and found that pneumoconiosis was established. The administrative law judge, however, reasonably accord his opinion less weight on the issue of pneumoconiosis because the x-ray relied on by Dr. Simpao was subsequently read as

negative by a better qualified physician and because Dr. Simpao did not sufficiently explain the basis for his diagnosis of pneumoconiosis. *See Clark v. Karst Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n. 4 (1984). Instead, the administrative law judge reasonably accorded greater weight to the opinions of Drs. Repsher and Broudy, that claimant did not have pneumoconiosis, as he found them better explained and supported by objective evidence. *Clark*, 12 BLR at 1-155. Accordingly, we reject claimant's contention that he was not provided a complete, credible pulmonary evaluation on the issue of pneumoconiosis.

Because we affirm the administrative law judge's finding that claimant failed to establish pneumoconiosis at Section 718.202(a)(1)-(4), an essential element of entitlement, we need not consider claimant's argument regarding total disability at Section 718.204(b)(2)(iv). *Anderson*, 12 BLR at 1-114; *Trent*, 11 BLR at 1-27.

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

BETTY JEAN HALL
Administrative Appeals Judge