BRB No. 97-1011 BLA

LARRY C. COLLINS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	
	)	
and	)	
	)	
TRANSCO ENERGY COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Timothy J. Walker (Reece & Jensen, PLLC), London, Kentucky, for employer/carrier.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0506) of Administrative Law Judge Fletcher E. Campbell, Jr., 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 adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718, and found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied.

On appeal, claimant asserts that the evidence supports a finding of seventeen years of coal mine employment[1] and that the evidence establishes all of the elements of entitlement. Employer/carrier responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a brief 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.,* 380 U.S. 359 (1965).

Claimant argues that the x-ray evidence establishes the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). In finding the evidence insufficient to establish the existence of pneumoconiosis, the administrative law judge considered the seventeen interpretations of the five x-rays of record. The administrative law judge stated that:

> none of the five X-ray films was read as positive without at least one (and in some cases many more) subsequent negative readings by one or more better qualified physicians. For this reason, I find that Claimant has failed to show by a preponderance of the X-ray evidence that Claimant suffers from CWP. Indeed, a preponderance of the X-ray evidence is strongly to the contrary.

Decision and Order at 6. We affirm this finding, as the administrative law judge permissibly considered the qualifications of the physicians, *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); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985), and properly relied upon the preponderance of the negative readings, *see Director, OWCP v. Greenwich Collieries* [Ondecko], 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).[2]

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[1] Although the administrative law judge did not make a length of coal mine employment finding, employer correctly asserts that the parties stipulated to seventeen years of coal mine employment. *See* Hearing Transcript at 8.

[2] We also hold that the existence of pneumoconiosis is not established pursuant to

Claimant also asserts that the opinions of Drs. Anderson, Baker and Myers are sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Specifically, claimant asserts that the opinions of Drs. Anderson, Baker and Myers are well documented and reasoned. The administrative law judge considered the medical opinions of Drs. Anderson, Broudy, Baker, Dineen, Dahhan and Myers. The administrative law judge found that the opinions of Drs. Anderson, Baker and Myers relied upon x-rays which were read as positive, but which were re-read by better qualified physicians as negative for pneumoconiosis, and in the case of Drs. Anderson and Myers, on non-qualifying objective tests. The administrative law judge determined that these physicians' opinions were therefore "poorly documented." The administrative law judge determined that the opinions of Drs. Broudy, Dineen and Dahhan, all of whom opined that claimant did not suffer from coal workers' pneumoconiosis, were "better reasoned and documented." The administrative law judge therefore determined that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Decision and Order at 6-7.

Section 718.202(a)(2) or (a)(3) inasmuch as there is no biopsy evidence or evidence of complicated pneumoconiosis in this living miner's claim filed in 1994. *See* 20 C.F.R. §§718.202(a)(2), (a)(3), 718.304, 718.305, 718.306.

We hold that the administrative law judge permissibly relied upon the opinions of Drs. Broudy, Dineen and Dahhan, which he properly found were better reasoned and documented than the other medical opinions of record. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wetzel v. Director, OWCP,* 8 BLR 1-138 (1985). We therefore affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), and reject claimant's assertion to the contrary.[3] *See* 20 C.F.R. §718.202(a)(4).

Inasmuch as we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis, one of the essential elements of entitlement pursuant to Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we need not address claimant's assertion regarding the other elements of entitlement.

[3] While the administrative law judge erred by finding that the opinions of Drs. Anderson, Baker and Myers were poorly documented rather than not well reasoned, *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987), this error is harmless in view of our affirmance of the administrative law judge's reliance on the opinions of Drs. Broudy, Dahhan and Dineen. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge