BRB No. 98-0526 BLA

THOMAS D. BURCHFIELD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GREEN CONSTRUCTION OF INDIANA	)	DATE ISSUED:
	)	
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Eric R. Collis (Lynch, Cox, Gilman & Mahan, P.S.C.), Louisville, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0395) of Administrative Law Judge Richard A. Morgan 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). After crediting claimant with no more than eight years of coal mine employment, 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). Because claimant failed to establish the existence of

pneumoconiosis, the administrative law judge also found that claimant could not establish that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. Although the administrative law judge found that the evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), the administrative law judge found that the evidence was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.[1] On appeal, claimant challenges the administrative law judge's length of coal mine employment finding. Claimant also argues that the x-ray evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Claimant further contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.203 and 718.204(b). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[2]

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

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[1]Subsequent to the issuance of the administrative law judge's Decision and Order, Raymond Equipment Company (Raymond) filed a motion seeking to be dismissed as a party to the claim. By Order dated December 23, 1997, the administrative law judge dismissed Raymond as a party in the instant case.

[2]The Director, Office of Workers' Compensation Programs (the Director), previously filed a cross-appeal. The Director filed a "Motion to Dismiss" on May 1, 1998. By Order dated May 28, 1998, the Board granted the Director's motion, and dismissed his cross-appeal.

Claimant contends that the x-ray evidence is sufficient to establish the existence of pneumoconiosis. In determining whether the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge properly accorded greater weight to the interpretations rendered by physicians with the dual qualifications of B reader and Board-certified radiologist. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 11. The administrative law judge found that Drs. Alexander, Aycoth, Spitz, Sargent, Halbert and Wiot are dually qualified as B readers and Board-certified radiologists. Decision and Order at 7. The only x-ray that was interpreted as positive for pneumoconiosis was a film taken on March 18, 1994. The administrative law judge noted that while Drs. Alexander and Aycoth interpreted claimant's March 18, 1994 x-ray as positive for pneumoconiosis, Drs. Spitz, Sargent and Halbert interpreted the x-ray as negative for pneumoconiosis.[3] Decision and Order at 12. The administrative law judge, citing *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993), also found that Dr. Halbert's interpretation was entitled to "slightly additional weight" because he rendered his interpretation at the request of the Department of Labor rather than one of the principal parties.[4] *Id.* The administrative law judge, therefore, concluded that claimant's March 18, 1994 x-ray was negative for pneumoconiosis.[5] *Id.* Because the administrative law judge in the

[3]Although not recognized by the administrative law judge, Dr. Wiot, a B reader and Board-certified radiologist, also interpreted claimant's March 18, 1994 x-ray as negative for pneumoconiosis. *See* Director's Exhibit 47.

[4]In *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993), the Sixth Circuit held that the administrative law judge erred by considering "unduly repetitious" evidence surrounding the x-rays. The Sixth Circuit held that:

> Administrative factfinders simply cannot consider the quantity of evidence alone, without reference to a difference in the qualifications of the readers or without an examination of the party affiliation of the experts. In other words, consideration of merely quantitative differences, without an attendant qualitative evaluation of the x-rays and their readers, is legal error.

Woodward, 17 BLR at 2-87 (citation omitted).

[5]The administrative law judge also correctly noted that two subsequent x-rays taken on June 15, 1995 and July 15, 1995 were uniformly interpreted as negative for pneumoconiosis. Decision and Order at 12. The administrative law judge noted that all of the negative interpretations of these x-rays were rendered by B readers. *Id.*

instant case considered quantitative differences in the x-ray interpretations of record, concluding that the preponderance of the x-ray interpretations rendered by the most qualified readers was negative for pneumoconiosis, we affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *See Woodward*, *supra*.

Inasmuch as no party challenges the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant argues that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). In finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge credited the opinions of Drs. Broudy, Dahhan and Fino, which found that claimant did not suffer from pneumoconiosis, over Dr. Mettu's contrary opinion. Decision and Order at 12-14. The administrative law judge discredited Dr. Mettu's diagnosis of pneumoconiosis because it was based in part upon an inaccurate x-ray interpretation. *Id.* at 13. An administrative law judge may properly consider whether contrary readings of an x-ray that a physician relied upon in rendering his opinion call into question the reliability of his conclusion. *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); *see also Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983). Dr. Mettu's diagnosis of pneumoconiosis was based upon his positive interpretation of claimant's March 18, 1994 x-ray. Director's Exhibits 9, 43. Dr. Mettu has no special radiographical qualifications. As previously noted, the administrative law judge properly found that claimant's March 18, 1994 x-ray was negative for pneumoconiosis. Inasmuch as a majority of the best qualified physicians interpreted claimant's March 18, 1994 x-ray as negative for pneumoconiosis, the administrative law judge permissibly found that their interpretations call into question the reliability of the x-ray interpretation relied upon by Dr. Mettu. *See Winters*, *supra*.

The administrative law judge also properly discredited Dr. Mettu's opinion that claimant suffered from pneumoconiosis because the doctor relied upon an inaccurate smoking history. Decision and Order at 13. An administrative law judge may properly discredit the opinion of a physician which is based upon an inaccurate or incomplete picture of the miner's health.[6] *See generally Bobick v. Saginaw Mining*

[6]In his March 18, 1994 report, Dr. Mettu indicated that claimant had smoked 3-4 cigarettes a day since 1945. Director's Exhibit 9. The administrative law judge found that the evidence (including claimant's testimony) revealed that claimant had smoked one pack of cigarettes per day for fifty years. Decision and Order at 13; Transcript at 17.

Co., 13 BLR 1-52 (1988); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984).

Claimant argues that the administrative law judge erred in his consideration of the opinions of Drs. Broudy and Dahhan. Claimant argues that while Drs. Broudy and Dahhan opined that claimant did not suffer from coal workers' pneumoconiosis, neither physician indicated whether claimant's chronic obstructive pulmonary disease arose out of his coal dust exposure. We disagree. Dr. Broudy diagnosed chronic obstructive airways disease due to cigarette smoking. Director's Exhibit 45. Dr. Broudy also specifically opined that claimant did not suffer from any "significant pulmonary disease or respiratory impairment which has arisen from this man's occupation as a coal worker." *Id.* Dr. Dahhan similarly opined that claimant suffered from chronic obstructive lung disease due to smoking. Director's Exhibit 48. Dr. Dahhan found no evidence of pulmonary impairment and/or disability caused by, contributed to, or aggravated by coal dust exposure or occupational pneumoconiosis. *Id.* Inasmuch as it is based upon substantial evidence, the administrative law judge's finding that the medical evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed.

In light of our affirmance of the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's contentions regarding the administrative law judge's length of coal mine employment finding or the administrative law judge's findings pursuant to 20 C.F.R. §§718.203 and 718.204(b) as any errors therein would be harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge