BRB 99-0813 BLA

LONNIE WATTS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JEEPS TRUCKING COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
TRAVELER'S INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

J. Logan Griffith (Wells, Porter, Schmitt & Jones), Paintsville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-BLA-34) of Administrative Law Judge Thomas F. Phalen, Jr., on a duplicate 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 found that claimant established twenty years of coal mine employment, and based on the filing date of the most recent claim, applied the regulations found at 20 C.F.R. Part 718. Claimant filed his first

claim for benefits on February 18, 1977, which was denied by the district director on September 27, 1979. Director's Exhibit 43. Claimant has not pursued that claim. The administrative law judge found that claimant filed a duplicate claim on July 3, 1996 pursuant to 20 C.F.R. §725.309(d), and submitted new evidence. Director's Exhibit 1. The administrative law judge reviewed all the newly submitted evidence in accordance with *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994), and found that as claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) or total disability at 20 C.F.R. §718.204(c), claimant failed to establish a material change in conditions pursuant to Section 725.309(d). Accordingly, benefits were denied. Claimant appeals, contending that the administrative law judge erred in failing to find the existence of pneumoconiosis at Section 718.202(a)(1) and (a)(2), and total disability at Section 718.204(c).[1] Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge erred in failing to find the existence of pneumoconiosis based on the x-ray evidence pursuant to Section 718.202(a)(1). We disagree.

The evidence of record contains thirty-three readings of five x-ray films. Twenty-nine readings were read as negative for pneumoconiosis, most of which were made by physicians who were dually-qualified as B readers and Board-certified radiologists. Of the remaining four positive readings, none were made by dually qualified readers. Director's Exhibits 21-

[1] We affirm the administrative law judge's finding of twenty years of coal mine employment, his finding that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2), (3), and his finding that total disability was not established at 20 C.F.R. §718.204(c)(1)-(3) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

24. Although claimant is correct in asserting that there is no *requirement* that the administrative law judge accord greater weight to readers based on their qualifications, it nonetheless remains in his discretion to do so. *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985). We therefore reject claimant's contention that the administrative law judge impermissibly based his decision on the numerical superiority of the negative readings, as he clearly stated that he was considering the weight of the negative x-ray readings in conjunction with the superior qualifications of the readers who submitted negative readings. The administrative law judge permissibly accorded greater weight to the readings of the better qualified readers and therefore rationally found that the weight of the x-ray evidence was negative for the existence of pneumoconiosis. *See Staton v. Norfolk & Western Railway Co.*, 65 F.2d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Dixon, supra*; *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 9. Further, as claimant fails to explain how the administrative law judge "selectively analyzed" the evidence, we decline to address this contention. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986). We, therefore, affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

Claimant next contends that the administrative law judge erred in failing to credit the medical opinion of Dr. Baker. The evidence of record contains two newly submitted medical opinions. Dr. Baker diagnosed coal workers' pneumoconiosis, whereas Dr. Broudy found no coal workers' pneumoconiosis. Director's Exhibits 10, 36. The administrative law judge permissibly accorded greater weight to Dr. Broudy's opinion, as he found it better supported by the underlying documentation. *See Peabody Coal Co. v. Hill*, 123 F.2d 412, 21 BLR 2-192 (6th Cir. 1997); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *see Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *Duke v. Director, OWCP*, 6 BLR 1-1673 (1983). Decision and Order at 10. The administrative law judge permissibly accorded less weight to Dr. Baker's opinion, as he found that the opinion was merely a restatement of a positive x-ray interpretation and was not supported by other underlying objective evidence. *See Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Taylor v. Brown Badgett Inc.*, 8 BLR 1-405, 1-407 (1985). The administrative law judge determined that the pulmonary function study that Dr. Baker administered was invalid, the blood gas study was non-qualifying, and "his physical examination did not reveal a breathing impairment." Decision and Order at 10. We reject claimant's contention that the administrative law judge impermissibly rejected Dr. Baker's opinion because it was based on a positive x-ray, and erred in failing to find Dr. Baker's opinion reasoned. *Worhach, supra*; *Anderson, supra*; *Taylor, supra*. Accordingly, we affirm the administrative law judge's determination that the evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4).

Claimant next contends that the administrative law judge erred in failing to find the medical opinions sufficient to establish total disability at Section 718.204(c)(4). The administrative law judge properly weighed all the evidence together and found that it failed to establish total disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987). Neither Dr. Baker nor Dr. Broudy termed claimant totally disabled or made a sufficient physical assessment from which the administrative law judge could infer total disability. *See Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'd* 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Additionally, contrary to claimant's argument, the administrative law judge is not required to consider age, education and limited work experience in determining whether claimant is totally disabled from his usual coal mine employment inasmuch as these factors are not relevant to establishing total disability pursuant to Section 718.204(c). *See Taylor v. Evans & Gambrel Co., Inc.*, 12 BLR 1-83 (1988); *Gee*, *supra*. Nor, contrary to claimant's general contention, does a mere diagnosis of simple pneumoconiosis give rise to a presumption of total disability. *See* 718.204(c); *Gee, supra*. Accordingly, we affirm the administrative law judge's weighing of the medical reports at Section 718.204(c)(4) and his finding that claimant has not established total disability.

As we affirm the administrative law judge's finding that the newly submitted evidence fails to establish the existence of pneumoconiosis at Section 718.202(a) or total disability at Section 718.204(c), we affirm the administrative law judge's determination that claimant has failed to establish a material change in conditions pursuant to Section 725.309(d). *See Ross*, *supra*.

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge