BRB No. 00-0438 BLA

CLARENCE A. GIBSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INTERSTATE COAL COMPANY, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
TRANSCO ENERGY COMPANY	)	
	)	
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 - Denying Benefits of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, 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 (99-BLA-0655) of Administrative Law Judge Donald W. Mosser 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). Claimant filed an application for black lung benefits in November 1997. Director's Exhibit 1. The administrative law judge credited claimant with five years and nine months of coal mine

employment. Decision and Order at 10. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Decision and Order at 6-7. Further, the administrative law judge found that the evidence was insufficient to establish total disability under 20 C.F.R. §718.204(c)(1)-(4). Decision and Order at 7-8. Accordingly, the administrative law judge denied benefits.

Claimant appeals, arguing that the administrative law judge erred in determining claimant's length of coal mine employment. Claimant also argues that the administrative law judge erred in evaluating the x-ray evidence and medical report evidence of record pursuant to Section 718.202(a)(1) and (a)(4). Further, claimant asserts that the administrative law judge erred in determining that claimant was not totally disabled under Section 718.204(c)(4). Employer responds, advocating affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not respond to this appeal unless specifically requested to do so by the Board.

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 the 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any one of these elements precludes entitlement. *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*).

With regard to Section 718.202(a)(1), claimant argues that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis. Claimant's Brief at 5-6. Specifically, claimant avers that the administrative law judge relied almost solely on the qualifications of the physicians providing the x-ray interpretations. Claimant states that the Board has held that in weighing the x-ray evidence the administrative law judge need not defer to a doctor with superior qualifications. Moreover, claimant contends that while the administrative law judge placed substantial weight on the numerical superiority of the negative x-ray interpretations, the Board has held that an administrative law judge need not accept as conclusive the numerical superiority of x-ray interpretations. These arguments are without merit. The administrative law judge correctly found that the x-ray dated December 12, 1997 was interpreted as positive by Dr. Baker, who is a B reader. Decision and Order at 6; Director's Exhibit 12. Further, the

---

We affirm, as uncontested on appeal, the administrative law judge's findings that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

administrative law judge correctly found that the film was reread as negative by four physicians, Drs. Sargent, Barrett, Scott and Wheeler, who were all dually qualified as B readers and Board-certified radiologists. Director's Exhibits 13, 14, 29. The administrative law judge also correctly found that the x-ray taken on May 19, 1998 was interpreted as negative by both Dr. Broudy and Dr. Chandler. Director's Exhibits 23, 29; Employer's Exhibit 3. The administrative law judge concluded, "Because the negative readings constitute the majority of interpretations and are verified by more highly-qualified physicians, I find that the x-ray evidence does not establish the existence of pneumoconiosis." Decision and Order at 6. This finding by the administrative law judge was rational. *See Crace v. Kentland-Elkhorn Coal Corp.*, 109 F.3d 1163, 21 BLR 2-73, 2-81-82 (6th Cir. 1997); *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59-60, 19 BLR 2-271, 2-279-281 (6th Cir. 1995); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988). While an administrative law judge need not accord greater weight to a physician's opinion based on expertise, he may do so. *See Worley*, *supra*. In addition, while an administrative law judge need not accord greater weight to x-ray interpretations based on numerical superiority, he may do so. *See generally Staton*, *supra*.

In addition, claimant maintains that the administrative law judge may have selectively analyzed the x-ray evidence, and that the administrative law judge failed to weigh all relevant medical evidence to ascertain whether claimant established the presence of pneumoconiosis by the preponderance of the evidence. This contention lacks merit, and does not amount to a specific allegation of error by the administrative law judge. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

Next, claimant argues that the administrative law judge erred in finding that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(4). Claimant's Brief at 6-8. Specifically, claimant avers that the administrative law judge gave no rationale to support his rejection of Dr. Baker's opinion that claimant had coal workers' pneumoconiosis. Director's Exhibit 12. Claimant states that the administrative law judge did not state whether or not he found Dr. Baker's report to be unreasoned. Claimant adds that Dr. Baker's opinion was well reasoned, and also apparently argues that Dr. Baker's opinion was adequately documented. Claimant avers that an administrative law judge may not discredit the opinion of a physician whose report is based on a positive x-ray interpretation which is contrary to the administrative law judge's findings. Further, claimant maintains that an administrative law judge may not discredit a report based on a positive x-ray merely because the record contains subsequent negative x-rays.

Claimant's arguments have no merit. The administrative law judge correctly found that Drs. Broudy and Chandler found no evidence of coal workers' pneumoconiosis. Decision and Order at 7;

The record also contains four negative x-ray readings by Drs. Lima and Hilton. Director's Exhibit 27. To summarize, the record contains only one positive x-ray interpretation out of eleven x-ray interpretations. Director's Exhibits 12-14, 23, 27; Employer's Exhibit 3.

Director's Exhibits 23, 29; Employer's Exhibit 3. The administrative law judge stated that he gave more weight to the opinions of Drs. Broudy and Chandler as both reports were well-documented and reasoned and were consistent with the medical evidence of record. The administrative law judge also stated, correctly, that the record indicated that both physicians were Board-certified in pulmonary medicine. We affirm the administrative law judge's determination that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(4) on the basis of the superior credentials of Drs. Broudy and Chandler. *See Staton*, *supra*; *Worley*, *supra*. Since we affirm the administrative law judge's finding on this basis, we decline to address claimant's contention that Dr. Baker's opinion was well reasoned and documented. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

Claimant also contends generally, with respect to Section 718.202(a)(4), that although the weighing of the evidence is for the administrative law judge, the interpretation of medical data is for the medical experts. Therefore, according to claimant, it is error for the administrative law judge to interpret medical tests and thereby substitute his own conclusion for those of a physician. Claimant's Brief at 7-8. This contention is without merit, inasmuch as it does not amount to a specific allegation of error by the administrative law judge. *See Cox*, *supra*; *Sarf*, *supra*; *Fish*, *supra*.

Based on the foregoing discussion, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1) and (a)(4).

Since we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis under Section 718.202(a), a requisite element of entitlement, *see Trent, supra*, we affirm the administrative law judge's denial of benefits as a finding of entitlement is precluded.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

We decline to address claimant's arguments pertaining to the length of coal mine employment and total disability at 20 C.F.R. §718.204(c), since any error by the administrative law judge in this regard would be harmless and would not affect the disposition of the case. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).