

BRB No. 07-0220 BLA

S.F.)
)
 Claimant-Petitioner)
)
 v.)
)
 WHEELWRIGHT MINING,) DATE ISSUED: 11/09/2007
 INCORPORATED)
)
 and)
)
 TRAVELERS INSURANCE 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 Paul H. Teitler,
Administrative Law Judge, United States Department of Labor.

Thomas M. Moak (Moak & Nunnery, P.S.C.), Prestonsburg, Kentucky, for
claimant.

Lois A. Kitts (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer
and carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2005-BLA-05534)
of Administrative Law Judge Paul H. Teitler 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 credited claimant with twenty years of qualifying coal mine employment, based on the parties' stipulation, and adjudicated this claim, filed on June 1, 2001, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence of record was sufficient to establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(i), (iv), but insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or disability causation pursuant to 20 C.F.R. §718.204(c). 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), which affected his disability causation findings at 20 C.F.R. §718.204(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response.¹

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.² 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).

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 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 "failed to give proper weight and authority to the x-ray readings of Dr. Michael Alexander."

¹ We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment and his finding that the evidence of record did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4). *Skrack v. Island Creek Coal*, 6 BLR 1-710 (1983).

² The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner was employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

Claimant's Brief at 3. Contrary to claimant's arguments, however, we can discern no error in the administrative law judge's weighing of this evidence. The administrative law judge accurately reviewed the conflicting x-ray evidence of record, including the qualifications of the readers, and properly acknowledged that Dr. Alexander possessed dual qualifications as a Board-certified radiologist and B reader.³ Decision and Order at 4. The administrative law judge determined that the record contained three positive and five negative x-ray interpretations of seven films. The three positive x-ray interpretations of record were submitted by Dr. Alexander, and the administrative law judge properly determined that one of Dr. Alexander's films was reread as negative by Dr. Wiot, also a Board-certified radiologist and B reader, while the other two of Dr. Alexander's readings indicated a "poor quality of film which is copied, overexposed and with decreased contrast." Decision and Order at 4; Claimant's Exhibits 1, 2, 4. The remaining four negative interpretations were submitted by three B readers and one dually qualified reader. Director's Exhibit 6; Employer's Exhibits 1, 3, 7, 8. The administrative law judge permissibly considered the quantity of evidence in light of the qualifications of the readers and the quality of the films, and acted within his discretion in finding that claimant failed to meet his burden of establishing the existence of pneumoconiosis by a preponderance of the evidence at Section 718.202(a)(1). Decision and Order at 4; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *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); *White v. New White Coal Co.*, 23 BLR 1-1 (2004). The administrative law judge's findings are supported by substantial evidence, and thus are affirmed.

Claimant next maintains that if the administrative law judge had properly determined that the x-ray evidence established the existence of coal workers' pneumoconiosis, he could then have concluded that claimant's total disability was caused, at least in part, by his coal workers' pneumoconiosis. Claimant's Brief at 3-4.

³ A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §717.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co. Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A Board-certified radiologist is a physician who has been certified by the American Board of Radiology as having a particular expertise in the field of radiology.

As it has been determined that claimant failed to establish the existence of pneumoconiosis through x-ray evidence, however, his argument is moot.⁴

Because claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits. *See Anderson*, 12 BLR at 1-112.

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

⁴ We note that claimant does not challenge the administrative law judge's finding that none of the medical opinions of record diagnosed pneumoconiosis or disability due to pneumoconiosis.