

BRB No. 07-0235 BLA

R.D. )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 JAMIESON CONSTRUCTION COMPANY ) DATE ISSUED: 11/14/2007  
 )  
 and )  
 )  
 KENTUCKY EMPLOYERS MUTUAL )  
 INSURANCE )  
 )  
 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 (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order (2006-BLA-05235) of Administrative Law Judge Donald W. Mosser 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 credited claimant with at least sixteen years of qualifying coal mine employment, and adjudicated this claim, filed on October 15, 2004, 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

insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the x-ray and medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). Claimant further contends that the administrative law judge erred in finding that claimant was not totally disabled. Employer has not filed a response. The Director, Office of Workers' Compensation Programs, has declined to file a response.<sup>1</sup>

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.<sup>2</sup> 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 initially 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 "relied almost solely on the qualifications of the physicians providing the x-ray interpretations," "placed substantial weight on the numerical superiority of x-ray interpretations," and "may have selectively analyzed" the evidence. Claimant's Brief at 3. Claimant's arguments, however, are without merit, as the administrative law judge

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<sup>1</sup> 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)-(3). *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Skrack v. Island Creek Coal.*, 6 BLR 1-710 (1983).

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

accurately determined that all of the x-ray interpretations of record were negative for pneumoconiosis. Decision and Order at 7.

Claimant next maintains that the medical opinion of Dr. Simpao is reasoned, documented and sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), and that the administrative law judge should not have rejected the opinion for the reasons provided. Specifically, claimant argues that “the interpretation of medical data is for the medical experts ... it is an error for an ALJ to interpret medical tests and thereby substitute his own conclusion for those of a physician.” Claimant’s Brief at 5. Claimant’s arguments are without merit, and essentially amount to a request to reweigh the evidence, which is beyond the Board’s scope of review. *See Anderson*, 12 BLR at 1-113.

In evaluating the conflicting medical opinions of record, the administrative law judge neither interpreted medical data nor discredited Dr. Simpao’s medical opinion. Rather, the administrative law judge determined that both Drs. Simpao and Broudy possessed “excellent credentials” and that both physicians’ opinions were well documented and well reasoned. Decision and Order at 8. In resolving the conflict between the opinions, however, the administrative law judge acted within his discretion in according greater weight to Dr. Broudy’s opinion that claimant did not have pneumoconiosis nor any other chronic lung disease. Decision and Order at 8-9; Director’s Exhibit 13. The administrative law judge found that Dr. Broudy provided a more complete and thorough rationale for his conclusions than that provided by Dr. Simpao. Decision and Order at 8-9. Additionally, the administrative law judge found that Dr. Broudy’s opinion was better supported by the objective evidence of record. *Id.*; *see Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n. 1 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *King v. Cannelton Industries*, 8 BLR 1-146 (1985). As substantial evidence supports the administrative law judge’s finding that the weight of the medical opinion evidence was insufficient to establish the existence of pneumoconiosis, we affirm his findings pursuant to Section 718.202(a)(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 1-114. Consequently, we need not reach claimant’s arguments on the issue of total disability.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge