

BRB No. 07-0303 BLA

B.F.)
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 Claimant-Petitioner)
)
 v.)
)
 SHAMROCK COAL COMPANY)
)
 and) DATE ISSUED: 11/30/2007
)
 ACORDIA EMPLOYERS SERVICE)
)
 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 of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Emily Goldberg-Kraft (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (05-BLA-5238) of Administrative Law Judge Ralph A. Romano 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). This case involves a claim filed on October 29, 2003. The administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1),(4). Claimant also argues that the administrative law judge erred in finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant further contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim. Employer responds in support of the administrative law judge's denial of benefits. The Director has filed a limited response, requesting that the Board reject claimant's request that the case be remanded to the district director, based upon the Director's alleged failure to provide claimant with a complete, credible pulmonary evaluation.

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).

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

Claimant contends that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).¹ The x-ray evidence consists of six interpretations of four x-rays taken

¹ Because no party challenges the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

on February 1, 2003, November 24, 2003, March 3, 2004, and May 17, 2005. Although Dr. Baker, a B reader, interpreted claimant's February 1, 2003 x-ray as positive for pneumoconiosis, Director's Exhibit 11, Dr. Halbert, a B reader and Board-certified radiologist, interpreted this x-ray as negative for the disease.² Employer's Exhibit 3. The administrative law judge acted within his discretion in crediting Dr. Halbert's negative interpretation of claimant's February 1, 2003 x-ray, over Dr. Baker's positive interpretation, based upon Dr. Halbert's superior qualifications. 20 C.F.R. §718.202(a)(1); *see Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 5.

Although Dr. Simpao, who has no special radiological qualifications, interpreted claimant's November 24, 2003 x-ray as positive for pneumoconiosis, Director's Exhibit 13, Dr. Wiot, a B reader and Board-certified radiologist, interpreted this x-ray as negative for the disease. Employer's Exhibit 2. The administrative law judge acted within his discretion in crediting Dr. Wiot's negative interpretation of claimant's November 24, 2003 x-ray, over Dr. Simpao's positive interpretation, based upon Dr. Wiot's superior qualifications. 20 C.F.R. §718.202(a)(1); *Sheckler*, 7 BLR at 1-131; Decision and Order at 5-6.

The remaining x-ray interpretations of record were negative for pneumoconiosis.³ Therefore, the administrative law judge found that the x-ray evidence did not establish the existence of pneumoconiosis. Decision and Order at 6.

The administrative law judge based his finding that pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1) on a proper qualitative analysis of the x-ray evidence. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and "may have 'selectively analyzed'" the readings, lack merit. Claimant's Brief at 3. We, therefore, affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Claimant argues that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R.

² Dr. Barrett, a B reader and Board-certified radiologist, interpreted claimant's February 1, 2003 x-ray for quality purposes only. Director's Exhibit 14.

³ Dr. Dahhan, a B reader, interpreted claimant's March 3, 2004 x-ray as negative for pneumoconiosis. Director's Exhibit 17. Dr. Broudy, a B reader, interpreted claimant's May 17, 2005 x-ray as negative for pneumoconiosis. Employer's Exhibit 1.

§718.202(a)(4). Specifically, claimant argues that the administrative law judge erred in discounting Dr. Baker's diagnosis of pneumoconiosis. We disagree. In a February 1, 2003 report, Dr. Baker diagnosed coal workers' pneumoconiosis, based upon his positive interpretation of claimant's February 1, 2003 x-ray. Director's Exhibit 11. The administrative law judge permissibly found that the February 1, 2003 x-ray that Dr. Baker interpreted as positive for pneumoconiosis was interpreted by Dr. Halbert, a better qualified physician, as negative for pneumoconiosis, thus calling into question the reliability of Dr. Baker's opinion. *See Sheckler*, 7 BLR at 1-131; *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 10; Director's Exhibit 11; Employer's Exhibit 3. Moreover, substantial evidence supports the administrative law judge's permissible determination that the opinions of Drs. Broudy and Dahhan, that claimant does not have pneumoconiosis, were better reasoned and therefore outweighed Dr. Baker's opinion. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Director's Exhibit 17; Employer's Exhibit 1. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that the evidence did not 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*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Claimant contends that because the administrative law judge discredited Dr. Simpao's diagnosis of pneumoconiosis, "the Director has failed to provide the claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 5. The Director responds that he fulfilled his obligation to provide a complete pulmonary evaluation; the administrative law judge simply found that Dr. Simpao's diagnosis of pneumoconiosis was outweighed. Director's Brief at 4.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406; *see Hodges v. BethEnergy Mines*, 18 BLR 1-84 (1994). The record reflects that Dr. Simpao conducted an examination and the full range of testing required by the regulations. Director's Exhibit 13; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). Claimant does not allege that Dr. Simpao's report was incomplete. On the issue of the existence of

pneumoconiosis, the administrative law judge found that Dr. Simpao's diagnosis of "coal workers' pneumoconiosis, category 1/0" was based on a positive x-ray reading that the administrative law judge found outweighed by the negative reading of a physician with superior radiological credentials.⁴ Decision and Order at 5; Director's Exhibit 13. This was the sole cardiopulmonary diagnosis listed in Dr. Simpao's report, and the administrative law judge found the specific medical data for Dr. Simpao's diagnosis to be outweighed. Because the administrative law judge merely found Dr. Simpao's opinion outweighed on the issue of pneumoconiosis, there is no merit to claimant's argument that he was not provided with a complete and credible pulmonary evaluation regarding the existence of pneumoconiosis. *Cf. Hodges*, 18 BLR at 1-93.

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 As previously noted, the administrative law judge acted within his discretion in crediting Dr. Wiot's negative interpretation of claimant's November 24, 2003 x-ray, over Dr. Simpao's positive interpretation, based upon Dr. Wiot's superior qualifications.