BRB No. 04-0243 BLA

GREGORY FUGATE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BLEDSOE COAL CORPORATION	)	
	)	
and	)	
	)	
JAMES RIVER COAL COMPANY	)	DATE ISSUED: 10/27/2004
	)	
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 – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (03-BLA-5204) of Administrative Law Judge Thomas F. Phalen, Jr. 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 miner's claim for

benefits filed on February 5, 2001, which the administrative law judge considered pursuant to the applicable regulations at 20 C.F.R. Part 718. After crediting claimant with twenty-six years of coal mine employment based upon the stipulation of the parties, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis and total disability under 20 C.F.R. §§718.202(a)(1)-(4) and 718.204(b)(2)(i)-(iv), respectively. Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's findings at Sections 718.202(a)(1) and (a)(4), and 718.204(b)(2)(iv). Employer has filed a response brief in support of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not intend to participate in this appeal.[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. 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 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*).

In challenging the administrative law judge's weighing of the x-ray evidence of record under Section 718.202(a)(1), claimant argues that the administrative law judge erred in finding that the negative x-ray interpretations outweigh the two positive readings, which were submitted by Drs. Hussain and Baker. Claimant argues that the administrative law judge improperly relied on the qualifications of the physicians submitting the negative interpretations, and the numerical superiority of the negative readings. Claimant's contention is without merit. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge may not rely solely on the quantity of the evidence, but may consider it along with the qualifications of the readers. *See Staton v. Norfolk & Western Railroad Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*,

[1]We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established twenty-six years of coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3.

991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). In this case, the administrative law judge properly found that Dr. Baker's positive reading of the film taken on February 28, 2001 was outweighed by the three negative readings of the film, which were submitted by Drs. Barrett, Haynes and Wiot. The administrative law judge correctly credited the three negative readings of Drs. Barrett, Haynes and Wiot because the three physicians are Board-certified radiologist/ B readers, in contrast to Dr. Baker, who possesses neither credential. *See Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; Decision and Order at 11; Director's Exhibits 13, 14, 16; Employer's Exhibit 1. In addition, the administrative law judge properly credited Dr. Wiot's negative reading of the film dated April 18, 2001 over Dr. Hussain's positive interpretation of this x-ray on the ground that Dr. Hussain is neither a Board-certified radiologist nor a B reader. *See Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; Decision and Order at 11; Director's Exhibit 14; Employer's Exhibit 2. The administrative law judge also correctly found that the remaining film in the record, taken on July 3, 2001, was read only as negative, by Dr. Broudy, a B reader. Decision and Order at 11; Director's Exhibit 15. Because it is supported by substantial evidence and is in accordance with law, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).[2] *See Staton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87*; Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); Decision and Order at 11; Director's Exhibits 13-16; Employer's Exhibits 1, 2.

In challenging the administrative law judge's findings with regard to the medical opinion evidence under Section 718.202(a)(4), claimant argues that the administrative law judge erred in discounting the opinions of Drs. Baker and Hussain, who diagnosed claimant with pneumoconiosis. Specifically, claimant asserts that the administrative law judge erred in discounting the opinions of Drs. Baker and Hussain on the ground that they were based upon a positive x-ray reading which conflicted with the administrative law judge's determination that the weight of the x-ray evidence was negative. Claimant argues that the administrative law judge thereby improperly substituted his opinion for the opinions of Drs. Baker and Hussain. Claimant further asserts that it was error for the administrative law judge not to find the opinions of Drs. Baker and Hussain to be reasoned and documented in view of the fact that each of the doctors based his diagnosis of pneumoconiosis not only upon a positive x-ray reading, but also upon a physical examination, pulmonary function study, and medical and work histories. Claimant also

[2]Claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for his contention, however, and the Decision and Order reflects that the administrative law judge properly considered the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 11. Thus, we reject claimant's suggestion.

contends that the opinions of Drs. Baker and Hussain should have been accorded greater weight since the doctors are Board-certified pulmonary specialists. Finally, claimant argues that Dr. Baker's opinion was entitled to significant weight because he treated claimant on several occasions.

Claimant's contentions lack merit. The administrative law judge properly discounted the opinions of Drs. Baker and Hussain, as not well reasoned, upon correctly finding that the doctors based their diagnoses of clinical pneumoconiosis solely upon a positive x-ray reading and claimant's twenty-six year history of coal dust exposure. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Decision and Order at 12-14; Director's Exhibits 12-14. In addition, the administrative law judge properly discounted Dr. Baker's diagnosis of a "moderate" pulmonary impairment due in part to coal dust exposure, and Dr. Hussain's diagnosis of a "moderately severe" pulmonary impairment related to coal dust exposure, on the ground that these doctors had provided little, if any, narrative reasoning to support their diagnoses.[3] *Clark*, 12 BLR at 1-155; Decision and Order at 12-13; Director's Exhibits 12-14. We thus reject claimant's assertion that the administrative law judge erred in failing to accord substantial weight to Dr. Baker's opinion when considering the factors relevant to treating physicians' opinions under 20 C.F.R. §718.104(d). A treating physician's opinion is not automatically entitled to greater weight; rather, the opinion of a treating physician gets the deference it deserves based upon its power to persuade. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002). The administrative law judge properly discounted Dr. Baker's opinion upon determining that, notwithstanding that Dr. Baker treated claimant on four occasions in 2001, Dr. Baker's opinion that the miner had pneumoconiosis was not well-reasoned or supported by the objective evidence of record. *Williams*, 338 F.3d at 513, 22 BLR at 2-647; *Clark*, 12 BLR at 1-155; Decision and Order at 13; Director's Exhibits 12, 13. In addition, contrary to claimant's contention, the administrative law judge properly considered that Drs. Baker and Hussain are Board-certified in pulmonary disease medicine. Decision and Order at 7-8. Because Dr. Broudy, who submitted a contrary opinion indicating that claimant does not have pneumoconiosis, is a similarly qualified, Board-certified pulmonary specialist, the administrative law judge did not err in failing to credit the opinions of Drs. Baker and Hussain based upon their credentials. Decision and Order at 7-8, 14; Director's Exhibits 13-15.

[3]Dr. Baker indicated that the pulmonary function study and arterial blood gas study he administered in his examination on February 28, 2001 were "normal" studies. Director's Exhibit 13. Dr. Hussain indicated that the pulmonary function study he administered in his examination on April 18, 2001 was normal, and that the arterial blood gas study showed mild hypoxemia. Director's Exhibit 14.

Moreover, the administrative law judge properly credited the contrary opinion of Dr. Broudy as well-documented and reasoned. Decision and Order at 14. A reasoned opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician's conclusions. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Whether a medical opinion is sufficiently documented and reasoned is for the administrative law judge as the fact-finder to decide. *Clark*, 12 BLR at 1-155; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). As the administrative law judge found, Dr. Broudy based his opinion that claimant does not have pneumoconiosis on his examination findings, the lack of evidence of the disease on both the chest x-ray and the CT scan he administered, and the results of the pulmonary function and arterial blood gas studies he administered, which he indicated were "normal." Decision and Order at 14; Director's Exhibit 15. We affirm, therefore, the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4). In addition, we affirm, as unchallenged on appeal, the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (a)(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 11.

Because we affirm the administrative law judge's determination that claimant did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4), a requisite element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits. *See Trent*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2. We need not address, therefore, claimant's contentions with respect to the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(b).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge