BRB Nos. 05-0253 BLA
and 05-0253 BLA-A

RALPH HACKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RALPH HACKER TRUCKING	)	DATE ISSUED: 10/26/2005
	)	
and	)	
	)	
COMMERCIAL UNION 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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

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

H. Brett Stonecipher (Ferreri & Fogle), Lexington, Kentucky, for employer and carrier.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order (2003-BLA-6180) of Administrative Law Judge Rudolf L. Jansen denying benefits on a subsequent 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-seven years of qualifying coal mine employment, as stipulated by the parties and supported by the record, and adjudicated this claim, filed on November 19, 2001, pursuant to the provisions at 20 C.F.R. Part 718. After finding that employer was properly designated the responsible operator herein, the administrative law judge determined that claimant's previous claim had been denied because the evidence was insufficient to establish any element of entitlement, and that the present claim was subject to the provisions at 20 C.F.R. §725.309(d). The administrative law judge reviewed the new evidence submitted in support of this subsequent claim, and determined that it was sufficient to establish total respiratory disability, thus claimant had demonstrated a change in one of the applicable conditions of entitlement at Section 725.309(d). Weighing all of the evidence of record, however, the administrative law judge found that claimant failed to establish 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 that the weight of the x-ray and medical opinion evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1), (4). Employer responds, urging affirmance of the denial of benefits, and cross-appeals, challenging its designation as the responsible operator in this case. The Director, Office of Workers' Compensation Programs (the Director), has declined to file a substantive response to claimant's appeal, but urges the Board to affirm the administrative law judge's finding that employer is the appropriate responsible operator herein.[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

[1] We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment, his finding that the weight of the evidence established total disability at 20 C.F.R. §718.204(b)(2) and a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d), 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), or disability causation pursuant to 20 C.F.R. §718.204(c). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mine industry in the

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, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Claimant first challenges the administrative law judge's finding that the weight of the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis 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. 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 first reviewed the new x-ray evidence submitted in support of this subsequent claim, which consisted of three positive and four negative interpretations of three films, and one film which was interpreted as showing "COPD" without any indication of whether this condition was due to coal dust exposure. The administrative law judge determined that the film dated October 8, 2002 was interpreted as positive for pneumoconiosis by a dually-qualified Board-certified radiologist and B reader, and as negative by a dually-qualified physician as well as by a B reader, while films dated January 3, 2002 and November 14, 2001 were each interpreted as positive by a physician with no special radiological qualifications, and as negative by a B-reader. Decision and Order at 9, 13-14. In reviewing the earlier x-ray evidence, consisting of one positive and fourteen negative interpretations of seven films, the administrative law judge determined that ten of the negative readings were by dually-qualified physicians or B-readers, while the sole positive interpretation was by a physician with neither qualification. Decision and Order at 18. Based on the preponderance of negative interpretations by the best-qualified readers, the administrative law judge acted within his discretion in finding that, weighed separately and together, the old and new x-ray evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). Decision and Order at 14, 18; *see 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

Commonwealth of Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

(2004). The administrative law judge's findings are supported by substantial evidence and thus are affirmed.

Claimant next maintains that the medical opinions of Drs. Baker and Simpao are 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 opinions for the reasons provided. Claimant's Brief at 4-5. 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 1-111. In evaluating the conflicting medical opinions of record, the administrative law judge properly accorded little weight to Dr. Baker's diagnosis of pneumoconiosis, based on a positive x-ray interpretation and claimant's history of coal dust exposure, because Dr. Baker provided no other basis for his diagnosis, which the administrative law judge found did not constitute a reasoned medical opinion sufficient to meet claimant's burden at Section 718.202(a)(4). Decision and Order at 14; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v Director, OWCP*, 17 BLR 1-105 (1993); *Anderson*, 12 BLR at 1-113. Although Dr. Baker also diagnosed chronic obstructive airways disease and bronchitis, the administrative law judge permissibly found that the physician's opinion was incomplete, and thus poorly reasoned and insufficient to establish the existence of pneumoconiosis, as Dr. Baker did not address the etiology of these conditions. Decision and Order at 14-15; *see* 20 C.F.R. §718.201(a)(2); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge acted within his discretion in according full weight to the conflicting opinions of Drs. Simpao and Broudy, enhanced by the physicians' qualifications as pulmonary specialists, as the administrative law judge found that both opinions were well documented and reasoned.[3] Decision and Order at 15; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-149(1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic*, 8 BLR 1-46. The administrative law judge, however, permissibly concluded that Dr. Broudy's opinion was the better reasoned, and thus outweighed the other medical opinions of record, because the physician issued a more thorough and detailed analysis of claimant's respiratory condition, and Dr. Broudy's review of the medical record provided him with a more complete picture of claimant's health. Decision and Order at 15; *see generally Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). As claimant has not identified any legal or factual error in the administrative law judge's weighing of the remaining old or new medical opinions of

[3] Dr. Simpao diagnosed pneumoconiosis, while Dr. Broudy ruled out coal dust exposure as a cause of claimant's respiratory condition, and diagnosed COPD due solely to smoking, Decision and Order at 11; Director's Exhibits 13, 31.

record, we affirm his finding that the weight of the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as supported by substantial evidence. *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984).

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 1-111. Consequently, we need not reach employer's arguments on cross-appeal regarding the issue of employer's designation as the responsible operator.

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