BRB No. 06-0389 BLA

RAYMOND BARKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 10/30/2006
	)	
RIFLE COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
OLD REPUBLIC 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 of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Raymond Barker, West Liberty, Kentucky, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (04-BLA-6557) of Administrative Law Judge Jeffrey Tureck 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 found that employer was the responsible operator and that the parties stipulated to ten

years of coal mine employment.[1] Decision and Order at 2-5; Hearing Transcript at 5-6. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.[2] Decision and Order at 5. After considering all the evidence of record, the administrative law judge concluded that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Decision and Order at 5-9. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer has not filed a response brief. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a substantive response in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). 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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, 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).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered the ten[3] readings of the four x-rays of record, and accorded greater weight to the negative

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[1] The record indicates that claimant's last coal mine employment occurred in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] Claimant filed his claim for benefits on March 24, 2003, which was denied by the district director on March 31, 2004. Director's Exhibits 2, 45. Claimant subsequently requested a hearing before the Office of Administrative Law Judges on April 26, 2004. Director's Exhibit 47.

[3] Dr. Barrett interpreted the June 10, 2003 x-ray for quality purposes only. Director's Exhibit 14.

readings by the physician possessing radiological credentials, superior academic credentials and extraordinary expertise in the interpretation of x-rays for pneumoconiosis by his service on the American College of Radiology's Task Force on Pneumoconiosis. Decision and Order at 5-6. Specifically, the administrative law judge concluded that the May 26, 2004 x-ray interpreted by Dr. Muhammad, who has no qualifications for the interpretation of x-rays, was ambiguous for the existence of pneumoconiosis. Decision and Order at 5-6; Claimant's Exhibit 4. The administrative law judge considered further that Dr. Dineen interpreted the June 10, 2003 x-ray and that Dr. Miller interpreted the June 10, 2003, February 7, 2004, May 26, 2004, and September 8, 2004 x-rays as positive for the existence of pneumoconiosis. Decision and Order at 5; Director's Exhibit 13; Claimant's Exhibits 1-3, 8. The administrative law judge also considered that the record contained negative interpretations by Dr. Wiot of the June 10, 2003 and May 26, 2004 x-rays, and by Drs. Dahhan and Fino of the February 7, 2004 and September 8, 2004 x-rays, respectively. Decision and Order at 6; Employer's Exhibits 1, 3, 4, 8.

After noting that all the readers interpreting the x-rays were highly qualified, the administrative law judge accorded greater weight to the interpretations by Dr. Wiot and permissibly found that the x-ray evidence did not support a finding of the existence of pneumoconiosis.[4] *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); Decision and Order at 6. A review of the record reflects that the administrative law judge conducted a proper qualitative analysis of the conflicting x-ray readings pursuant to 20 C.F.R. §718.202(a)(1). *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). Consequently, the administrative law judge permissibly concluded that the claimant failed to carry his burden to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) by a preponderance of the x-rays. *Ondecko*, 512 U.S. 267, 18 BLR 2A-1.

The administrative law judge also correctly found that the claimant could not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2), since the record does not contain any biopsy or autopsy results. Decision and Order at 6. With respect to 20 C.F.R. §718.202(a)(3), the administrative law judge properly found that the

[4] The record indicates that Dr. Muhammad has no special qualifications for the interpretation of x-rays. Claimant's Exhibit 4; Employer's Exhibit 9. Drs. Miller and Wiot are B-readers and board-certified radiologists. Claimant's Exhibits 1-3, 8; Employer's Exhibit 3. Drs. Dahhan, Dineen and Fino are B-readers. Employer's Exhibits 1, 2, 4, 5; Decision and Order at 5. As noted by the administrative law judge, the record further indicates that in addition to his radiological credentials, Dr. Wiot has extensive academic credentials in the field of radiology as well as service on the American College of Radiology's Task Force on Pneumoconiosis. Employer's Exhibit 3.

presumption set forth at 20 C.F.R. §718.304 was inapplicable because there was no evidence of complicated pneumoconiosis in the record. Decision and Order at 5. Although not addressed by the administrative law judge, the presumptions set forth at 20 C.F.R. §§718.305 and 718.306 are not applicable to this claim, since it was filed after January 1, 1982 and the claim is not a survivor's claim. *See* 20 C.F.R. §§718.305(e), 718.306; Director's Exhibit 2.

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge properly noted the entirety of the medical opinion evidence of record and rationally considered the quality of the evidence in determining whether the opinions of record were supported by the underlying documentation and adequately explained. *Collins v. J & L Steel*, 21 BLR 1-181 (1999). The administrative law judge acted within his discretion in concluding that the opinions of Drs. Dineen and Muhammad were insufficient to meet claimant's burden of proof, because Dr. Dineen diagnosed pneumoconiosis based upon a positive x-ray which was reread as negative by a physician with superior credentials, and because Dr. Muhammad's opinion was equivocal.[5] *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988).

The Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Consequently, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a), as it is supported by substantial evidence and is in accordance with law. *See McFall*, 12 BLR at 1-177.

[5] Dr. Muhammad opined that his findings and the miner's history of exposure to coal dust are "suggestive" of underlying coal workers' pneumoconiosis. The physician further stated that claimant's chronic lung disease "appears" to be due to a combination of obstructive airway disease and emphysema resulting from exposure to coal dust as well as chronic airway disease from long-term tobacco use. Claimant's Exhibit 4.

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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BETTY JEAN HALL
Administrative Appeals Judge