BRB No. 06-0423 BLA

BILLY LEE HUNT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
McCOY ELKHORN COAL CORPORATION	)	DATE ISSUED: 10/31/2006
	)	
and	)	
	)	
JAMES RIVER COAL COMPANY c/o 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 Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Kristie M. Goff (Glenn M. Hammond Law Office), Pikeville, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-5709) of Administrative Law Judge Janice K. Bullard (the administrative law judge) 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 the evidence established a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b), but found that it failed to establish the existence of pneumoconiosis or total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred by not finding the existence of pneumoconiosis established based on Dr. Hussain's, 2/1, positive x-ray interpretation and based on the opinion of Dr. Hussain, finding that coal dust exposure was the primary cause of claimant's pneumoconiosis and breathing impairment, the opinion of Dr. Casey, claimant's treating physician, and the opinion of Dr. Maynard. 20 C.F.R. §718.202(a)(1), (4). Claimant also asserts that the administrative law judge should have found him entitled to the presumption that his pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203 based on the evidence of record and his twenty-two year coal mine employment history. Additionally, claimant contends that the administrative law judge should have found that his total disability was due to pneumoconiosis, 20 C.F.R. §718.204(c). Employer responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a response brief.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act 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, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.201, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1(1986)(*en banc*).

After careful consideration of the arguments on appeal, the administrative law judge's Decision and Order, and the evidence of record, we conclude that the administrative law judge's Decision and Order is rational, supported by substantial evidence, and in accordance with law. It is, therefore, affirmed. Contrary to claimant's argument, Dr. Hussain's positive x-ray interpretation does not establish the existence of pneumoconiosis in this case. In considering the x-ray evidence, the administrative law judge found that Dr. Hussain, who possessed no special radiological qualifications, found the July 11, 2001 x-ray to be positive, while Dr. Wiot, who was both a Board-certified radiologist and a B-reader interpreted the

same x-ray as negative. Additionally, the administrative law judge found that two other x-rays of record were read negative by B-readers. Decision and Order at 6; Director's Exhibits 15, 16; Employer's Exhibits 1, 4. The administrative law judge, therefore, made a proper qualitative and quantitative analysis of the x-ray evidence in finding that the x-ray evidence did not establish the existence of pneumoconiosis. *Staton v. Norfolk and Western Railway 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). We affirm, therefore, the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1).[1]

Likewise, the administrative law judge permissibly found that the medical opinion evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). In considering the medical opinion evidence, the administrative law judge found that Drs. Hussain and Casey opined that claimant suffers from pneumoconiosis, Decision and Order at 7-8; Director's Exhibits 15, 17, while Drs. Rosenberg and Dahhan opined that claimant did not have pneumoconiosis. Decision and Order at 8-9; Employer's Exhibits 1, 2, 4, 5.[2] The administrative law judge permissibly discounted the opinion of Dr. Hussain because she found that it was internally inconsistent, *see Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984), and because she found that it was not well-reasoned. *See Eastover Mining Co. v. Williams*, 338 F.2d 501, 22 BLR 2-625 (6th Cir. 2003); *Cornett v. Benham Coal Co.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Tackett*

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[1] Moreover, we note that claimant has merely recited evidence favorable to his case, *i.e.*, Dr. Hussain's positive x-ray reading. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

[2] The administrative law judge listed, but did not discuss Dr. Maynard's opinion with the other medical opinion evidence. Dr. Maynard stated in a one page letter, dated September 11, 2003, Claimant's Exhibit 2, that "Mr. Hunt has an obstructive ventilatory defect with severe pulmonary impairment. His lung volumes are consistent with obstructive airways disease." Claimant's Exhibit 2. Dr. Maynard did not, however, elaborate as to the cause of claimant's obstructive airways disease. The opinion does not, therefore, constitute an opinion that claimant has pneumoconiosis as defined by the Act. 20 C.F.R. §718.201; *see Kurcaba v. Consolidation Coal Co.*, 9 BLR 1-73 (1986); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Dockins v. McWane Coal Co.*, 9 BLR 1-57 (1986). We reject, therefore, claimant's contention with respect to Dr. Maynard's opinion and we hold that it is legally insufficient to establish the existence of pneumoconiosis. 20 C.F.R. §718.201.

v. Cargo Mining Co., 12 BLR 1-11 (1988)(*en banc*), *aff'd sub nom. Director, OWCP v. Cargo Mining Co.*, Nos.88-3531, 88-3578 (6th Cir. May 11, 1989) (unpub.); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Cooper v. Director, OWCP*, 11 BLR 1-95 (1988)(Ramsey, CJ, concurring); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 10. Regarding the opinion of Dr. Casey, the administrative law judge, while acknowledging that Dr. Casey was claimant's treating physician, and that such status might entitle her opinion to greater weight, the administrative law judge nonetheless did not give additional weight to Dr. Casey's opinion based on that status, because she found that the record failed to contain the requisite evidence to allow the administrative law judge to appropriately assess Dr. Casey's relationship with claimant or whether that relationship entitled her opinion to greater weight. *See* 20 C.F.R. §718.104(d)(1)-(4); Decision and Order at 10-11. This was permissible. *See Williams*, 338 F.2d 501, 22 BLR 2-625; *see also Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 113 (1989). Finally, the administrative law judge found that both the opinions of Drs. Rosenberg and Dahhan were well-reasoned and entitled to "great weight." Decision and Order at 10-11; Employer's Exhibits 1, 2, 4, 5. The administrative law judge granted decisive weight to Dr. Dahhan's opinion, as supported by that of Dr. Rosenberg, over the contrary opinion of Dr. Casey because she found that his opinion was consistent with the objective evidence of record. Decision and Order at 11. This was proper. *See Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984). Because we affirm the administrative law judge's denial of benefits as the evidence is insufficient to establish the existence of pneumoconiosis, a necessary element of entitlement, *see Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1, we need not address claimant's contentions relative to Sections 718.203(b) and 718.204(c), as they are rendered moot by our disposition of the case. *See Cochran v. Director, OWCP*, 16 BLR 1-101(1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

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