BRB No. 07-0432 BLA

R.J.H.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOUNTAIN CLAY, INCORPORATED	)	
	)	DATE ISSUED: 10/29/2007
Employer-Respondent	)	
	)	
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 Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

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

John H. Baird (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Jeffrey S. Goldberg (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2005-BLA-5106) of Administrative Law Judge Richard T. Stansell-Gamm 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 credited claimant with at least ten years of qualifying coal mine employment, and adjudicated this

claim, filed on October 7, 2003, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the x-ray and medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). Claimant alternatively asserts that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation as required pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b), 20 C.F.R. §725.406(a), because the administrative law judge discounted the opinion of Dr. Simpao. Employer responds in support of the administrative law judge's denial of benefits. The Director has filed a limited response, requesting the Board to reject claimant's argument that the Director failed to provide claimant with a pulmonary evaluation that complies with the requirements of Section 413(b) of the Act.[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 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 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Claimant initially challenges the administrative law judge's weighing of the x-ray evidence of record at Section 718.202(a)(1), arguing that the administrative law judge

[1] We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment 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). *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Skrack v. Island Creek Coal*., 6 BLR 1-710 (1983).

[2] The law of the United States Court of Appeals for the Sixth Circuit is applicable as the miner was employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc).*

"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 accurately determined that the film dated September 13, 2003 was read as positive for pneumoconiosis, without contradiction, by Dr. Baker, a B reader, while films dated December 10, 2003 and May 18, 2005 were each read as negative by B readers, Drs. Rosenberg and Broudy, respectively.[3] The administrative law judge further determined that the film dated November 6, 2003 was read as positive for pneumoconiosis by Dr. Simpao, a physician with no special radiological qualifications, and reread as negative by Dr. Poulos, a B reader. Decision and Order at 5; Director's Exhibits 11, 13, 15; Employers Exhibits 2, 3. Based on the preponderance of negative interpretations by the best qualified readers,[4] the administrative law judge acted within his discretion in finding that the evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). Decision and Order at 6; *see 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 (2004). The administrative law judge's findings are supported by substantial evidence, and thus are affirmed.

Claimant next maintains that the medical opinion of Dr. Baker is 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 opinion for the reasons provided. Specifically, claimant argues that the administrative law judge discredited the opinion "merely because the record contains subsequent negative x-rays." Claimant's Brief at 4. Claimant's portrayal of the administrative law judge's assessment is inaccurate and without merit. After determining that claimant failed to meet his burden

[3] A "B Reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §717.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co. Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp*., 8 BLR 1-211 (1985).

[4] Section 718.202(a)(1) provides that where two or more x-ray reports are in conflict, consideration shall be given to the radiological qualifications of the physicians interpreting such x-rays. 20 C.F.R. §718.202(a)(1). The United States Court of Appeals for the Sixth Circuit has also held that an administrative law judge must consider the quantity of the evidence in light of the difference in qualifications of the readers. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995).

at Section 718.202(a)(1), the administrative law judge properly discounted Dr. Baker's diagnosis of clinical pneumoconiosis that was based on a positive x-ray and claimant's history of coal dust exposure. Decision and Order at 10-11; *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. The administrative law judge then considered Dr. Baker's diagnosis of chronic bronchitis and mild hypoxemia attributable in part to coal mine dust exposure, that would, if credited, establish legal pneumoconiosis as defined at 20 C.F.R. §718.201(a)(2). The administrative law judge permissibly concluded, however, that Dr. Baker's opinion was not well reasoned, and thus entitled to less weight, as the physician failed to indicate what portions of the examination, or how the arterial blood gas study, helped him to identify coal dust exposure as a contributing factor in claimant's respiratory condition.[5] Decision and Order at 11; Director's Exhibit 17; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge acted within his discretion in according greater weight to the contrary opinions of employer's experts, Drs. Broudy and Rosenberg, as he found that both opinions were more probative, reasoned, and documented. Decision and Order at 11; *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1989) (*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). We thus affirm the administrative law judge's 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.

Claimant next argues that, because the administrative law judge discounted Dr. Simpao's diagnosis of pneumoconiosis, the Director violated his statutory duty to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim. Claimant's Brief at 5. We disagree. The administrative law judge determined that Dr. Simpao conducted a physical examination, recorded claimant's symptoms as well as his employment, medical and social histories, obtained an x-ray, an electrocardiogram, pulmonary function and blood gas studies, and diagnosed "CWP 1/1" and a mild impairment, indicating that "multiple years of coal dust exposure is medically significant in his pulmonary impairment." Decision and Order at 8, 10; Director's Exhibit 11. The administrative law judge did not reject Dr. Simpao's opinion as not credible *per se*. Rather, the administrative law judge gave less weight to Dr. Simpao's diagnosis of pneumoconiosis because it was based in part upon a positive x-ray that was

[5] We affirm as unchallenged the administrative law judge's discounting of the remaining medical opinion of record, *i.e.*, Dr. Simpao's diagnosis of pneumoconiosis. *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984).

refuted by the negative interpretation of a better qualified reader and outweighed by the x-ray evidence as a whole. Furthermore, the administrative law judge determined that Dr. Simpao only referenced claimant's extensive exposure to coal dust but did not offer a medical rationale for his diagnosis. Decision and Order at 10; *see Clark*, 12 BLR at 1-155. The administrative law judge permissibly found that the contrary opinions of Drs. Broudy and Rosenberg were better reasoned and entitled to greater weight. Decision and Order at 11; *Lucostic*, 8 BLR at 1-47. Thus, as the Director argues, in these circumstances, where the physician's pulmonary evaluation was inherently credible and documented, but his diagnosis of pneumoconiosis was found to be outweighed by the conflicting evidence of record, the Director's statutory obligation is discharged. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.406(a); *see generally Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 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 at 1-112.

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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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge