

BRB No. 98-1232 BLA

RICHARD W. JONES)	
)	
Claimant-Petitioner))
)	
v.)	
)	
B.G. & M. COAL COMPANY,)	DATE ISSUED: <u>10/8/99</u>
INCORPORATED)	
)	
and)	
)	
KENTUCKY COAL PRODUCERS')	
SELF-INSURANCE FUND)	
)	
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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Dan F. Partin, Harlan, Kentucky, for claimant.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0689) of Administrative Law Judge Robert L. Hillyard 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 eleven and one-half years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The

administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Although the administrative law judge found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), the administrative law judge found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Neither employer nor the Director, Office of Workers' Compensation Programs, has participated in this appeal.¹

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).

¹Inasmuch as the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§718.202(a)(2), (a)(3) and 718.204(c) are not challenged on appeal, we affirm these findings. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Initially, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Specifically, claimant asserts that the administrative law judge erred by failing to accord dispositive weight to Dr. Vaezy's positive reading of the October 16, 1995 x-ray, which was performed at the request of the Department of Labor, since Dr. Vaezy's interpretation is the only impartial x-ray reading of record. Of the fourteen interpretations of record, nine readings are negative for pneumoconiosis, Director's Exhibits 13, 14, 26, 27; Employer's Exhibits 1-4, 6, and five readings are positive, Director's Exhibits 15, 20-23. In addition to noting the numerical superiority of the negative x-ray readings, the administrative law judge also considered the qualifications of the various physicians.² See *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994). The administrative law judge observed that "[s]even of the negative interpretations are by B readers who are also Board certified Radiologists, and one is by Dr. Dahhan, a B reader." Decision and Order at 9. Further, the administrative law judge observed that "[o]f the five positive readings, three are by B readers only and two are by Drs. Marshall and Brandon, physicians who are both B readers and Board certified Radiologists." *Id.* Inasmuch as there is no evidence in the record that the x-ray interpretations submitted by the parties in this case are biased, we reject claimant's assertion that the administrative law judge erred by failing to accord dispositive weight to Dr. Vaezy's positive reading of the October 16, 1995 x-ray, because it was performed at the request of the Department of Labor. See *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991). Moreover, we hold that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).

²The administrative law judge stated that "[b]ecause of the numerous readings by the more qualified physicians, the interpretation by Dr. Hilton, a physician with no special qualifications in the interpretation of x-rays, will not be discussed." Decision and Order at 9. Dr. Hilton read the September 4, 1996 x-ray as negative for pneumoconiosis. Employer's Exhibit 6.

Next, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the relevant medical opinions of Drs. Dahhan and Vaezy.³ Whereas Dr. Dahhan opined that claimant does not suffer from coal workers' pneumoconiosis, Employer's Exhibit 1, Dr. Vaezy opined that claimant suffers from coal workers' pneumoconiosis, Director's Exhibit 11. The administrative law judge properly discredited Dr. Vaezy's diagnosis of pneumoconiosis because he found the doctor's diagnosis to be a restatement of an x-ray reading.⁴ See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); see generally *Taylor v. Director, OWCP*, 9 BLR 1-22 (1986). Thus, we reject claimant's assertion that the administrative law judge erred by discrediting the opinion of Dr. Vaezy. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Therefore, since the administrative law judge, within a proper exercise of his discretion as trier of fact, discredited the only medical opinion of record that could support a finding of the existence of pneumoconiosis, we hold that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718.⁵ See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

³The administrative law judge observed that "Drs. Ann Douglas, Pramod Reddy, R.A. Anand, and Satyabrata Chatterjee made various diagnoses, but failed to attribute any of them to the Claimant's coal mine employment." Decision and Order at 9-10. The administrative law judge also observed that "Dr. Burki attributed the Claimant's pulmonary deficits to his morbid obesity." *Id.* at 10.

⁴The administrative law judge stated that Dr. Vaezy's "diagnosis of coal workers' pneumoconiosis was based **solely** on an abnormal chest x-ray." Decision and Order at 10 (emphasis added). Dr. Vaezy diagnosed "Coal Workers' Pneumoconiosis (based on chest x-ray **only**)." Director's Exhibit 11 (emphasis added).

⁵In view of our disposition of the case on the merits at 20 C.F.R. §718.202(a), we decline to address claimant's contention with regard to 20 C.F.R. §718.204(b).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge