BRB No. 98-1599 BLA

HARRISON CAMPBELL, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RIVER PROCESSING, INCORPORATED	)	
	)	
and	)	DATE ISSUED: 10/27/99
	)	
PARGAS, INCORPORATED	)	
	)	
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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (95-BLA-2164) of Administrative Law Judge Donald W. Mosser 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 considered the instant claim, which was filed on July 22, 1992, under the applicable regulations at 20 C.F.R. Part 718.[1] After

[1]Claimant filed an earlier claim on April 8, 1985. Director's Exhibit 50. This claim was abandoned, however, as claimant did not respond to the district director's Order to Show Cause dated July 31, 1985, in which the district director required claimant to show cause why his claim should not be deemed abandoned in view of his failure to submit any medical evidence in support thereof. *Id.* In the instant claim, the parties agreed to waive a

crediting claimant with thirteen years of coal mine employment and determining that employer was properly designated as the responsible operator, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability under 20 C.F.R. §718.204(c)(1)-(4). Accordingly, he denied benefits. On appeal, claimant challenges the administrative law judge's findings under Sections 718.202(a)(1) and (a)(4), and 718.204(c)(1) and (c)(4). Employer has not filed a response brief. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not presently intend to participate in this appeal.[2]

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. 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 under Part 718 in a living miner's claim, a 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); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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hearing and receive a Decision and Order based on the record.

[2]We affirm the administrative law judge's length of coal mine employment and responsible operator findings, as well as the administrative law judge's findings under 20 C.F.R. §§718.202(a)(2) and (a)(3), and 718.204(c)(2) and (c)(3), as these findings are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3-4, 10-12.

In challenging the administrative law judge's weighing of the x-ray evidence of record under Section 718.202(a)(1), claimant argues that the administrative law judge erred in crediting the twenty-three negative x-ray interpretations of record over the two positive x-ray readings of record by relying on the qualifications of the physicians reading the films and the numerical superiority of the negative readings. Claimant's contention is without merit. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction the instant case arises, has held that it is precisely these factors which must be considered by a fact-finder when weighing the x-ray evidence. *See Staton v. Norfolk & Western Railroad 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). In weighing the x-ray evidence in the instant case, the administrative law judge properly discounted Dr. Baker's positive reading of the June 9, 1993 film because five other physicians possessing superior qualifications as B reader/Board-certified radiologists read the film as negative.[3] *See Staton, supra; Woodward, supra; Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); Decision and Order at 10; Director's Exhibits 44, 46, 48, 50. Likewise, the administrative law judge properly discounted Dr. Myers's positive reading of the film dated June 28, 1993 inasmuch as the record reflected that Dr. Myers does not possess special radiological qualifications and five B reader/ Board-certified radiologists read this film as negative. *See Staton, supra; Woodward, supra; Edmiston, supra*; Decision and Order at 10; Director's Exhibits 44, 47, 49, 50. The remaining interpretations of record were, as the administrative law judge found, uniformly negative for pneumoconiosis, a fact which is undisputed by claimant. Decision and Order at 10; Director's Exhibits 13-14, 34-42. We, therefore, affirm the administrative law judge's finding that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).[4] *Staton, supra; Woodward, supra; Edmiston, supra.*

In challenging the administrative law judge's findings with regard to the medical opinion evidence under Section 718.202(a)(4), claimant argues that the administrative law judge erred in rejecting the reports of Drs. Baker, Myers and Wicker as unreasoned and undocumented. Specifically, claimant asserts that the administrative law judge erred in discounting these reports on the ground that it was obvious from their reports that these physicians based their diagnoses of pneumoconiosis solely on positive x-ray readings, rather than the complete results of their examinations. Claimant suggests that the

[3]The June 9, 1993 x-ray, as well as Dr. Myers's June 28, 1993 x-ray, were both read as negative by Drs. Sargent, Barrett, Gogineni, Binns and Wershba, all of whom are B readers and Board-certified radiologists. Director's Exhibits 47, 49, 50.

[4]We note that claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence, thereby committing error. Claimant provides no support for his conclusion, however, and the administrative law judge's Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 10. Thus, we reject this contention.

administrative law judge thereby improperly substituted his opinion for the opinions of the physicians, and asserts that it was error for the administrative law judge not to find the physicians' reports to be reasoned and documented in view of the fact that the physicians relied upon claimant's work history and administered physical examinations in addition to taking x-rays.

Whether a medical opinion is sufficiently reasoned and documented is for the administrative law judge, as fact-finder, to decide. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*). In the instant case, the administrative law judge found the reports of Drs. Baker, Myers and Wicker were not reasoned and documented upon determining that the doctors based their respective diagnoses of pneumoconiosis on the results of the chest x-rays they administered rather than the complete results of their examinations.[5] Decision and Order at 11. The administrative law judge further found that the indication from Drs. Baker and Myers that the results of the objective tests they conducted were within normal limits also detracted from their shared opinion that claimant has pneumoconiosis. *Id*. To the extent the administrative law judge provided insufficient reasons for his finding that the opinions of Drs. Baker, Myers and Wicker were undocumented and unreasoned, any error in that regard was harmless as the administrative law judge otherwise provided proper reasons for according greatest weight to the contrary opinions of Drs. Dahhan, Broudy and Fino, which indicate that claimant does not suffer from pneumoconiosis. *See Kozele v. Rochester and Pittsburgh Coal Co.,* 6 BLR 1-378 (1983). The administrative law judge permissibly credited the opinions of Drs. Dahhan, Broudy and Fino on the ground that their opinions were supported by the objective medical data of record. *See Clark, supra; Tackett, supra*; Decision and Order at 11; Director's Exhibits 10, 34, 37, 42; Employer's Exhibits 1, 2. The administrative law judge further found that Dr. Broudy reviewed all of the medical evidence of record in addition to having examined claimant on January 18, 1993. Decision and Order at 11; Director's Exhibit 34; Employer's Exhibit 2. Moreover, the administrative law

[5]Dr. Baker, who examined claimant on June 9, 1993, diagnosed pneumoconiosis and indicated that he based his diagnosis on his 1/0 x-ray interpretation and claimant's ten year duration of coal dust exposure. Director's Exhibit 44. Dr. Baker indicated that the pulmonary function and arterial blood gas studies he administered were normal, advised that claimant should avoid dusty conditions, and stated that claimant may have difficulty doing sustained manual labor even in a dust free environment due to his pneumoconiosis. *Id*. Dr. Myers examined claimant on June 28, 1993 and, in the "Diagnosis and Rationale" section of his questionnaire report, indicated, without elaboration, a diagnosis of "Coal workers' pneumoconiosis, category 1/0, q/t, both mid lung zones and right upper lung zone." Director's Exhibit 44. Dr. Myers also indicated that the pulmonary function study he conducted was normal. *Id*. Dr. Wicker examined claimant on August 19, 1992, and diagnosed coal workers' pneumoconiosis by x-ray, which the doctor read as 0/1, and did not indicate what other factors, if any, influenced his opinion. Director's Exhibit 11. Dr. Myers also stated that claimant retains the respiratory capacity for his former coal mine employment. *Id*.

judge properly credited the reports of Drs. Dahhan, Broudy and Fino as these physicians possess superior qualifications.[6] *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 11; Director's Exhibits 37, 42; Employer's Exhibit 1. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Inasmuch as the administrative law judge properly determined that claimant did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4), a requisite element of entitlement under Part 718, the administrative law judge properly found entitlement to benefits precluded. *See Trent, supra; Gee, supra; Perry, supra.* We need not address, therefore, claimant's contentions under Section 718.204(c)(1) and (c)(4).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

[6]All three physicians are Board-certified in internal medicine and pulmonary diseases. Director's Exhibits 37, 42; Employer's Exhibit 1. The record does not reflect that Drs. Baker, Myers and Wicker are similarly qualified.