BRB No. 98-1621 BLA

JOHN T. YAGALLA, SR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BELTRAMI ENTERPRISES, INCORPORATED	)	DATE ISSUED:
	)	
	)	
and	)	
	)	
LACKAWANNA CASUALTY 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 Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Carol M. Marconis, Pottsville, Pennsylvania, for claimant.

Maureen E. Calder (Marshall, Dennehey, Warner, Coleman & Goggin), Scranton, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1291) of Administrative Law Judge Ainsworth H. Brown 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). After noting that the parties stipulated to twenty-two years of coal mine employment, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits. 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. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Claimant argues that the administrative law judge erred in finding that the x-ray and medical opinion evidence was insufficient to establish the existence of pneumoconiosis. The administrative law judge recognized that the United States Court of Appeals for the Third Circuit, within whose jurisdiction the instant case arises, has held that although Section 718.202(a) enumerates four distinct methods of establishing pneumoconiosis, all types of relevant evidence must be weighed together to determine whether a claimant suffers from the disease. *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Consequently, the administrative law judge acknowledged that he was required to weigh all the evidence relevant to 20 C.F.R. §718.202(a)(1), (a)(2) and (a)(4) together in determining whether a claimant suffers from pneumoconiosis.[1] *Williams*, *supra*.

[1]Inasmuch as no party challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3.

Claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis. Although the administrative law judge noted that claimant's December 18, 1996, April 24, 1997 and October 24, 1997 x-rays were read as positive by physicians dually qualified as B readers and Board-certified radiologists, the administrative law judge properly found that an equal number of similarly qualified physicians found that each of these x-rays was negative for pneumoconiosis.[2] Decision and Order at 3. The

[2]The record contains interpretations of four x-rays taken on September 10, 1996, December 18, 1996, April 24, 1997 and October 24, 1997.

Seven physicians dually qualified as B readers and Board-certified radiologists interpreted claimant's September 10, 1996 x-ray as negative for pneumoconiosis. Director's Exhibits 13, 22, 27. Two B readers also interpreted claimant's September 10, 1996 x-ray as negative for pneumoconiosis. Director's Exhibit 12; Employer's Exhibit 1. There are no positive interpretations of this x-ray in the record.

administrative law judge, therefore, found the x-ray evidence was insufficient to establish the existence of pneumoconiosis. *Id.* at 3-4. Claimant, however, argues that the administrative law judge failed to consider that the negative x-ray interpretations were "provided on behalf of the [e]mployer by physicians who maintain a professional relationship." Claimant's Brief at 2. We disagree. There is

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While five physicians dually qualified as B readers and Board-certified radiologists interpreted claimant's December 18, 1996 x-ray as positive for pneumoconiosis, Claimant's Exhibits 1-5, five equally qualified physicians interpreted this x-ray as negative for pneumoconiosis. Employer's Exhibits 8, 11.

While three physicians dually qualified as B readers and Board-certified radiologists interpreted claimant's April 24, 1997 x-ray as positive for pneumoconiosis, Claimant's Exhibit 19, three equally qualified physicians interpreted this x-ray as negative for pneumoconiosis. Employer's Exhibit 13. Dr. Levinson, an A reader, also interpreted claimant's April 24, 1997 x-ray as negative for pneumoconiosis.

While Dr. Smith, a dually qualified B reader and Board-certified radiologist, interpreted claimant's October 24, 1997 x-ray as positive for pneumoconiosis, Claimant's Exhibit 6, Dr. Ciotola, an equally qualified physician, interpreted this x-ray as negative for pneumoconiosis. Employer's Exhibit 5.

no logical basis for assuming that evidence prepared in anticipation of litigation is less reliable or unfairly slanted in favor of the party presenting it. *See Cochran v. Consolidation Coal Co.*, 16 BLR 1-101 (1992).

Claimant also contends that the administrative law judge erred in finding the opinions of Drs. Kraynak and Kruk insufficient to establish the existence of pneumoconiosis. Claimant argues that the administrative law judge erred in not according greater weight to Dr. Kraynak's opinion based upon his status as claimant's treating physician. Contrary to claimant's contention, the administrative law judge was not required to accord greater weight to Dr. Kraynak's opinion based upon his status as claimant's treating physician. While an administrative law judge may accord more weight to the opinion of a treating physician, he is not required to do so. *See Schaaf v. Matthews*, 574 F.2d 157 (3d Cir. 1978); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988). Moreover, the administrative law judge permissibly accorded greater weight to the opinions of Drs. Kruk, Rashid, Levinson and Dittman based upon their superior qualifications.[3] *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 4. While Dr. Kruk diagnosed pneumoconiosis, Claimant's Exhibit 10, Drs. Levinson and Dittman opined that the miner did not suffer from pneumoconiosis. Employer's Exhibits 3, 6. Because Dr. Rashid did not include a cardiopulmonary diagnosis in the designated space on his report, the administrative law judge reasonably inferred that Dr. Rashid also did not find any evidence of pneumoconiosis. Decision and Order at 3-4; Director's Exhibit 9. The administrative law judge found that Dr. Kruk's opinion of pneumoconiosis was outweighed by the contrary opinions of Drs. Rashid, Levinson and Dittman. Decision and Order at 3-4.

The administrative law judge properly found that the x-ray evidence was equally probative and, therefore, insufficient to support a finding of pneumoconiosis. The administrative law judge also properly found that a majority of the best qualified physicians of record, Drs. Rashid, Levinson and Dittman, opined that claimant did not suffer from pneumoconiosis. Inasmuch as it is supported by substantial

[3]Dr. Levinson is Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibit 3. Drs. Kruk, Rashid and Dittman are Board-certified in Internal Medicine. Director's Exhibit 9; Claimant's Exhibit 13; Employer's Exhibit 6. Dr. Kraynak is merely Board-eligible in Family Medicine. Claimant's Exhibit 20.

evidence, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Williams*, *supra*.

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

JAMES F. BROWN
Administrative Appeals Judge