BRB No. 06-0366 BLA

IKE CRAIG	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 09/22/2006
RB COAL COMPANY	)	
	)	
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 Denying Benefits of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

S. Parker Boggs (Buttermore & Boggs), Harlan, Kentucky, for claimant.

W. Stacy Huff, (Huff Law Office), Harlan, Kentucky, for employer.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (04-BLA-6367) of Administrative Law Judge Jeffrey Tureck rendered on a subsequent[1] 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). Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law

[1] Claimant's initial claim for benefits, filed on October 20, 1995, was denied as abandoned on January 24, 1996. Director's Exhibit 1. Claimant filed his current claim on November 7, 2002. Director's Exhibit 2.

judge accepted the parties' stipulation to 18.45 years of coal mine employment[2] and found that the previous claim was denied due to abandonment. Decision and Order at 1-2; Director's Exhibit 1. The administrative law judge further found that pursuant to 20 C.F.R. §725.409(c), a denial by reason of abandonment shall be deemed a finding that claimant has not established any applicable condition of entitlement. For purposes of his decision, the administrative law judge "presume[d] that the claimant has established a change in one of the applicable conditions of entitlement" pursuant to 20 C.F.R. §725.309(d). Decision and Order at 3. The administrative law judge therefore considered all the evidence of record to determine whether claimant is entitled to benefits. The administrative law judge found that claimant failed 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 failing to find the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1), (a)(4). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not submit a response brief on the merits of this appeal.[3]

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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, 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).

[2] The administrative law judge correctly found that this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mine industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Decision and Order at 2; Director's Exhibits 1, 2.

[3] The administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §§718.202(a)(2)-(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered eight readings of three x-rays in light of the readers' radiological qualifications, and determined that the x-ray evidence did not establish the existence of pneumoconiosis. Decision and Order at 3-4; *see Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993).

Although it is claimant's burden to specify error in the decision below, *see* 20 C.F.R. §802.211(b), claimant, who is represented by counsel, alleges no error in the administrative law judge's weighing of the x-rays. Instead, he argues that the x-rays establish the existence of pneumoconiosis. However, the Board is not authorized to undertake a de novo adjudication of the claim. To do so would upset the carefully allocated division of authority between the administrative law judge as trier-of-fact, and the Board as a reviewing tribunal. *See* 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Cox v. Benefits Review Board*, 791 F. 2d 445, 446-47, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). As we have emphasized previously, the Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order with specificity and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. *See* 20 C.F.R. §802.211(b); *Sarf*, 10 BLR at 1-120; *Cox*, 791 F.2d at 446, 9 BLR at 2-47; *Slinker v. Peabody Coal Co.*, 6 BLR 1-465, 1-466 (1983); *Fish*, 6 BLR at 1-109. In this case, claimant fails to identify any error by the administrative law judge in his evaluation of the x-rays. Thus, the Board has no basis upon which to review this part of the administrative law judge's decision. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).[4]

Pursuant to Section 718.202(a)(4), the administrative law judge considered three medical opinions. Dr. Baker diagnosed claimant with pneumoconiosis, while Drs. Dahhan and Branscomb concluded that he does not have pneumoconiosis. Director's Exhibits 9, 12; Employer's Exhibit 2. The administrative law judge found that Dr. Baker's opinion was not well-reasoned. Additionally, the administrative law judge found that Dr. Baker's opinion was outweighed by Dr. Branscomb's "better reasoned" opinion,

[4] We note that the administrative law judge conducted a qualitative analysis of the five negative and three positive x-ray readings, and permissibly found that the positive readings were countered by negative readings from physicians qualified as either B-readers, or as Board-certified radiologists and B-readers. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); Decision and Order at 3-4. Substantial evidence supports these findings.

which was also supported by Dr. Branscomb's "greater expertise" in pulmonary medicine. Decision and Order at 6, 7.

Claimant contends that the administrative law judge failed to provide a reason for according greater weight to the opinion of Dr. Branscomb, a non-examining physician, over the examining physician Dr. Baker. Claimant's Brief at 5. Contrary to claimant's contention, the administrative law judge reasonably discounted Dr. Baker's diagnosis of "Coal Workers' Pneumoconiosis 1/0" because it was based on Dr. Baker's positive reading of the December 21, 2002 x-ray, which the administrative law judge found outweighed by the negative x-ray evidence by physicians with superior qualifications. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); Decision and Order at 4. To the extent that Dr. Baker diagnosed impairments that he related partly to coal dust exposure, the administrative law judge permissibly found that Dr. Baker had no objective basis to conclude that claimant suffers from an obstructive lung disease, because his opinion was based on an invalid pulmonary function study. *Id.* The administrative law judge also explained that he gave less weight to Dr. Baker's opinion because Dr. Baker did not explain his opinion. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

The administrative law judge permissibly found that Dr. Branscomb better explained his conclusions, and that Dr. Branscomb's opinion was bolstered by his greater expertise in pulmonary medicine. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103. In arguing that Dr. Baker's opinion was consistent with the evidence, claimant essentially requests a reweighing of the evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Substantial evidence supports the administrative law judge's permissible determination that Dr. Baker's opinion was not as well-reasoned or explained as Dr. Branscomb's opinion. Consequently, we affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Because claimant failed to establish the existence of pneumoconiosis, a necessary element of entitlement in a miner's claim under Part 718, we affirm the administrative law judge's denial of benefits. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge