BRB No. 06-0376 BLA

DAVID STIDHAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
IKERD BANDY COMPANY, INCORPORATED C/O ACORDIA EMPLOYERS SERVICE	)	DATE ISSUED: 09/19/2006
	)	
and	)	
	)	
SECURITY INSURANCE OF HARTFORD	)	
	)	
Employer/Carrier-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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Leroy Lewis (Law Office of Phillip Lewis), Hyden, Kentucky, for claimant.

Denise Kirk Ash, Lexington, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (2004-BLA-5154) of Administrative Law Judge Thomas F. Phalen, Jr. 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 found that the record supports the parties' stipulation to at least twenty-three years of coal mine employment. Decision and Order at 3. Considering the evidence, the administrative law

judge found that claimant was unable to establish the existence of coal workers' pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), was unable to establish the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), and was unable to establish the presence of a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Decision and Order at 4-12. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in not finding the existence of pneumoconiosis established based on x-ray and medical opinion evidence and erred in not finding total respiratory disability established based on medical opinion evidence. Employer responds and urges that the denial of benefits be affirmed. The Director has not filed a brief in this appeal.[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. 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 element of entitlement precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.[2] Claimant's assertion that the administrative law judge erred in failing to find the existence of pneumoconiosis established lacks merit. In this case, the administrative law judge found that the x-ray interpretations of record included a positive

[1] We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment determination and the finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

interpretation of the April 17, 2002 x-ray, by Dr. Baker, Director's Exhibit 9, but that this interpretation was outweighed by the negative interpretation of the same x-ray by Dr. Broudy, a physician who possessed radiological qualifications superior to those of Dr. Baker.[3] Contrary to claimant's assertion, the administrative law judge may rely upon the qualifications of the physicians in weighing the x-ray evidence and determining the weight to be assigned the interpretations. 20 C.F.R. §§718.102(c); 718.202(a)(1)(ii)(E); *Vance v. Eastern Associated Coal Corp.*, 8 BLR 1-68 (1985); *Aimone v. Morrison Knudson Co.*, 8 BLR 1-32 (1985). Director's Exhibit 10. Further, the administrative law judge found that the one reading, by Dr. Dahhan, a B-reader, of the May 14, 2002 x-ray, Director's Exhibit 11, was negative. The administrative law judge thus permissibly found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) because the preponderance of x-ray readings by physicians with superior qualifications was negative. Decision and Order at 9; *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); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*).

In addition, claimant contends that the administrative law judge erred in failing to find that the medical opinions of record support a finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(4). In particular, claimant argues that the opinion of Dr. Baker, Director's Exhibits 9, 31, and the opinion of claimant's "treating source," Dr. Varghese, Claimant's Exhibit 1, support a finding of the existence of the disease, Claimant's Brief at p.3 (unpaginated).

In determining whether the existence of pneumoconiosis was established pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge reviewed all of the medical opinion evidence of record and rationally considered the quality of the evidence in determining whether the opinions were supported by their underlying documentation and were adequately explained. Decision and Order at 7-11; *Collins v. J & L Steel*, 21 BLR

[3] The administrative law judge found, and the record supports the finding, that at the time of the reading of the x-ray, Dr. Broudy possessed both B-reader and board-certified radiologist credentials. 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. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia 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). The administrative law judge found that Dr. Baker possessed no particular expertise in the reading of x-rays.

1-181 (1999); *Worhach*, 17 BLR at 1-108; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 n.4 (1993) (administrative law judge must consider each report to determine if that report's underlying documentation supports its conclusion); *Clark*, 12 BLR at 1-155. The administrative law judge acted within his discretion, as fact-finder, in concluding that Dr. Baker's opinion was insufficient to support a finding of pneumoconiosis because the physician's diagnosis was based solely upon claimant's coal mine employment history and the physician's positive x-ray reading. Decision and Order at 10; Director's Exhibit 10; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *see also Jericol Mining , Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 22 BLR 2-495 (6th Cir. 2002); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 1-62, 1-175 (4th Cir. 2000); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). In addition, the administrative law judge permissibly found that Dr. Baker's opinion that claimant suffered from chronic bronchitis based on symptoms was not a reasoned medical opinion, *see Cornett*, 227 F.3d 569, 22 BLR 2-107, and further rationally found, that the physician's statements that "coal dust exposure may be a contributory factor to his chronic bronchitis and mild or minimal resting arterial hypoxemia[,]" Director's Exhibit 31, was equivocal and thus not supportive of claimant's burden at Section 718.202(a)(4), *see Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-117 (6th Cir. 1995); *see Justice v. Island Creek Coal Co.*, 11 BLR 1-191 (1988); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985).

In addition, contrary to claimant's general assertion that the medical opinions and treatment records of Dr. Varghese are entitled to superior weight pursuant to 20 C.F.R. §718.104(d)[4] based on the physicians' status as claimant's treating physician, the administrative law judge noted the physician's relationship with claimant, Decision and Order at 12, but permissibly concluded that the medical opinions and treatment records rendered by the physician did not constitute well-reasoned and well-documented

[4] Section 718.104(d) provides that a treating physician's opinion may be accorded superior weight based upon:

a) the nature of the physician/claimant relationship
b) the duration of that relationship
c) the frequency of the physician's treatment
d) the extent of the treatment

20 C.F.R. §718.104(d)(1)-(4). The regulation also requires the administrative law judge to consider the treating physician's opinion "in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5); 20 C.F.R. §718.204(b)(2)(i), (ii).

opinions. The administrative law judge thus permissibly concluded that Dr. Varghese's conclusions were entitled to no particular weight. 20 C.F.R. §718.104(d)(5); *Clark*, 12 BLR 1-149; *Peskie*, 8 BLR 1-126; *Lucostic*, 8 BLR 1-46.

Further, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Dahhan, that claimant does not have pneumoconiosis, because he found that the physician offered a reasoned and documented opinion that was supported by the objective medical evidence of record and was bolstered by the physician's superior credentials. Decision and Order at 11-12; Director's Exhibit 11; *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003); *Stephens*, 298 F.3d 511, 22 BLR 2-495; *Worhach*, 17 BLR at 1-108; *Trumbo*, 17 BLR at 1-89; *Clark*, 12 BLR at 1-155; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1986). We thus 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 has failed to establish the existence of pneumoconiosis, a requisite element of entitlement, entitlement is precluded and we need not address the administrative law judge's additional findings and claimant's contentions pursuant to 20 C.F.R. §§718.204(b)(2) and 718.204(c). *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

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 S. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge