

BRB No. 06-0956 BLA

R.G.)
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 Claimant-Respondent)
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 v.)
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 GCI, INCORPORATED)
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 and)
)
 NATIONAL AMERICAN INSURANCE) DATE ISSUED: 09/24/2007
 COMPANY)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Alice M. Craft,
Administrative Law Judge, United States Department of Labor.

Brandon J. Burton (Burton & Associates, P.C.), Oklahoma City, Oklahoma,
for claimant.

Brian A. Curthoys, Tulsa, Oklahoma, for employer and carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2004-BLA-06120)
of Administrative Law Judge Alice M. Craft 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 thirty years

of qualifying coal mine employment, as stipulated by the parties, and adjudicated this claim, filed on December 26, 2001, pursuant to the regulatory provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, benefits were awarded.

On appeal, employer asserts that the opinions of Drs. Hastings and Munneke are unsupported and conclusory, and employer contends that the administrative law judge erred in discounting the opinion of Dr. Nichols and in relying on the opinions of Drs. Hastings and Munneke to support her finding that claimant established the existence of pneumoconiosis at Section 718.202(a)(4).¹ Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

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.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After considering 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. The administrative law judge accurately reviewed the medical opinions of record at Section 718.202(a)(4), and determined that Dr. Nichols diagnosed severe restrictive lung disease of unknown etiology, Director's Exhibit 12, while Dr. Hastings³ diagnosed a severe restrictive lung defect secondary to repetitive

¹ The administrative law judge's weighing of the remaining medical opinion evidence at 20 C.F.R. §718.202(a)(4) is affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² The law of the United States Court of Appeals for the Tenth Circuit is applicable, as the miner was employed in the coal mine industry in Oklahoma. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

³ We reject employer's assertion that the administrative law judge erred in failing to "point out the bias that potentially would be involved with Dr. Hastings being the physician providing a report for the claimant's attorney." Employer's Brief at 6. The fact that a party has hired a medical expert does not, by itself, demonstrate partiality or partisanship on the part of the physician. *See Urgolites v. Bethenergy Mines, Inc.*, 17

cumulative exposure to coal mine dust and silicates, Director's Exhibit 10, Claimant's Exhibit 1, and Dr. Munneke diagnosed a cumulative trauma injury to claimant's lungs that was related to his work with employer, Employer's Exhibit 4.⁴ Decision and Order at 7-8. As Dr. Nichols's notes stated that chest x-ray changes were not present to support a diagnosis of pneumoconiosis, and the physician did not otherwise explain why he concluded that the etiology of claimant's pulmonary impairment was unknown, the administrative law judge reasonably inferred that Dr. Nichols had relied upon the "completely negative" interpretation of a December 18, 2002 x-ray he had obtained from Dr. Ferrell, a Board-certified radiologist. Decision and Order at 10-11; Director's Exhibits 12, 17; Employer's Exhibit 1. Since Dr. Wu, a better-qualified Board-certified radiologist and B reader, subsequently found multiple changes present on that same film,⁵

BLR 1-20, n.4 (1992); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-35 (1991)(*en banc*).

⁴ Dr. Hastings examined claimant on November 21, 2000 and obtained a chest x-ray and pulmonary function testing on that date, as well as medical, social and employment histories. Director's Exhibit 10; Claimant's Exhibit 1. Contrary to employer's arguments, *see* Employer's Brief at 4-7, Dr. Hastings noted claimant's work in the gas drilling industry under the "Past Medical History" section of his report, and indicated that claimant denied any significant shortness of breath symptomatology or chest tightness prior to his work activities with employer. *Id.* Dr. Hastings observed abnormalities on chest examination, and reported that claimant's pulmonary function testing revealed a severe restrictive lung defect; that the x-ray revealed evidence of pleural scarring over the left lung base consistent with his restrictive defect; and the physician concluded that claimant's lung impairment resulted from his coal mine employment. *Id.* Dr. Munneke examined claimant on June 28, 2001, obtained pulmonary function studies and medical, social and employment histories, and reviewed the medical records and objective testing of Drs. Gillock and Hastings. Employer's Exhibit 4. Dr. Munneke reported that claimant's chest x-ray revealed mild fibrotic changes but no active disease process or marked chronic obstructive pulmonary disease. *Id.* While the results of Dr. Munneke's pulmonary function testing demonstrated a significant improvement over the results obtained by Drs. Gillock and Hastings, Dr. Munneke concluded that claimant suffered a 20% impairment to the body as a whole due to the condition of his lungs, related to his work for employer. *Id.* Contrary to employer's arguments, the administrative law judge could properly conclude that the opinions of Drs. Hastings and Munneke were well-reasoned and documented. *See Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

⁵ Dr. Wu reported low lung volumes; traces of small lung nodules in the right upper lung; traces of fine, fibrotic changes at the midlungs and bases bilaterally;

Claimant's Exhibit 2, the administrative law judge rationally concluded that the x-ray evidence was not "completely negative,"⁶ albeit insufficient to establish the existence of pneumoconiosis, and that Dr. Nichols's failure to diagnose a coal mine employment-related disease did not preclude a finding that one existed. Decision and Order at 10-11. Contrary to employer's arguments, the administrative law judge had no duty to obtain a supplemental opinion from Dr. Nichols based on his review of Dr. Wu's x-ray report, nor was she required to discount the medical opinion of any physician who did not review Dr. Wu's interpretation. Employer's Brief at 7-9; *see generally King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984); *White v. Director, OWCP*, 6 BLR 1-368 (1983). The administrative law judge acted within her discretion in finding that the opinions of Drs. Hastings and Munneke were sufficient to satisfy claimant's burden of establishing the existence of legal pneumoconiosis at Section 718.202(a)(4), and we affirm that finding as supported by substantial evidence. Decision and Order at 11; *see 20 C.F.R. §718.201; Andersen v. Director, OWCP*, 455 F.3d 1102, 23 BLR 2-332 (10th Cir. 2006); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

As employer has not challenged the administrative law judge's finding that the weight of the evidence was sufficient to establish total disability due to pneumoconiosis at Section 718.204, we affirm the administrative law judge's findings thereunder, and affirm her award of benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

prominent pleural plaque formation at the left chest wall extending to the left costophrenic angle and mild pleural plaque formation at the right lower chest wall; and a calcified granuloma at the left infrahilar region. Dr. Wu concluded that the findings were consistent with asbestos exposure and early changes of chronic lung disease. Claimant's Exhibit 2; Decision and Order at 5, 9.

⁶ The administrative law judge further determined that, consistent with Dr. Wu's interpretation, the only other x-ray film of record, obtained on November 21, 2000, was read by Dr. Fullingim as showing streak atelectasis with parenchymal and pleural scarring, left base. Claimant's Exhibit 1; Decision and Order at 4, 9.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge