

BRB No. 07-0196 BLA

J.C. )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 JARISA, INCORPORATED ) DATE ISSUED: 09/24/2007  
 )  
 and )  
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 KENTUCKY EMPLOYERS MUTUAL )  
 INSURANCE )  
 )  
 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 - Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (05-BLA-5394) of Administrative Law Judge Ralph A. Romano 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 seventeen years of coal mine employment, and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on claimant's October 3, 2001 filing date. Addressing the merits of entitlement, the administrative law judge found that the medical evidence was insufficient to establish either the existence of pneumoconiosis or that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence when he found that claimant did not establish the existence of pneumoconiosis. Claimant also contends that the administrative law judge erred in his consideration of the medical opinion evidence in finding that claimant did not establish that he is totally disabled. In response, employer urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has stated that he will not respond on the merits of claimant's appeal.<sup>1</sup>

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'Keefe 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; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 415-16, 21 BLR 2-192, 2-196-7 (6th Cir. 1997). Failure to establish any one of these elements precludes entitlement. *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); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

In challenging the administrative law judge's weighing of the x-ray evidence pursuant to Section 718.202(a)(1), claimant argues that the administrative law judge erred in relying upon the physicians' qualifications and the numerical superiority of the

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<sup>1</sup> We affirm the administrative law judge's decision to credit claimant with seventeen years of coal mine employment, and his finding that the evidence was insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2) and (3), as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

negative x-ray interpretations. Claimant also contends that the administrative law judge selectively analyzed the x-ray evidence. These contentions lack merit. The administrative law judge acted within his discretion as fact-finder in determining that the x-ray evidence did not support a finding of pneumoconiosis, as none of the x-rays were read as positive for pneumoconiosis pursuant to Section 718.202(a)(1).<sup>2</sup> Decision and Order at 8; Director's Exhibits 13, 22, 25; Employer's Exhibit 1; 20 C.F.R. §718.202(a)(1); see *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *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).

Claimant generally contends that the administrative law judge erred in finding that the medical opinion evidence fails to establish the existence of pneumoconiosis. Claimant's Brief at 4. Claimant states that it is error for the administrative law judge to substitute his own interpretations of the medical evidence for those of the physician. *Id.* This contention lacks merit. The administrative law judge properly found that none of the medical opinions of record diagnosed the existence of pneumoconiosis. Specifically, he correctly found that Drs. Hussain, Broudy and Dahhan all opined that claimant did not suffer from pneumoconiosis.<sup>3</sup> Decision and Order at 7, 9; Director's Exhibits 10, 20, 24, 28, 35; Employer's Exhibits 1, 2; see *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-123 (6th Cir. 2000); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

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<sup>2</sup> The record contains the x-ray reading of Dr. Hussain, who found the May 1, 2002 x-ray to be completely negative, and Dr. Wheeler's reading of this film which showed no pleural or parenchymal abnormalities consistent with pneumoconiosis. Director's Exhibits 13, 25. Similarly, Dr. Broudy read the July 11, 2002 x-ray as showing no pleural or parenchymal abnormalities consistent with pneumoconiosis, and Dr. Dahhan read the April 10, 2006 x-ray as completely negative. Director's Exhibit 22; Employer's Exhibit 1.

<sup>3</sup> Dr. Hussain diagnosed coronary artery disease and no pulmonary impairment. In a supplemental questionnaire, Dr. Hussain checked the "no" box in response to the question whether claimant had an occupational lung disease caused by coal mine employment. Director's Exhibits 10, 24, 35. Dr. Broudy diagnosed a back injury and anxiety, but also stated that claimant does not have coal workers' pneumoconiosis or any chronic lung disease caused by the inhalation of coal dust. Director's Exhibits 20, 28. Likewise, Dr. Dahhan opined that there was no evidence of coal workers' pneumoconiosis and no evidence of pulmonary impairment and/or disability contributed to by coal dust exposure. Employer's Exhibits 1, 2.

As the administrative law judge correctly found that the record contains no affirmative evidence of pneumoconiosis, claimant's contentions that the administrative law judge erred in substituting his interpretation of the medical evidence for that of a physician lacks merit. Consequently, since claimant does not otherwise allege any specific errors with the administrative law judge's weighing of the evidence in this case, we affirm his finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). See *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

Because claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4), a requisite element of entitlement in a miner's claim under Part 718, entitlement to benefits is precluded. *Hill*, 123 F3d at 415-16, 21 BLR at 2-196-7; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. We, therefore, need not address claimant's allegations of error with respect to the administrative law judge's Section 718.204(b)(2) findings.

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 P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge