BRB No. 07-0201 BLA

J. R. H.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	DATE ISSUED: 09/20/2007
	)	
and	)	
	)	
ACORDIA EMPLOYERS SERVICE	)	
	)	
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 Denying Benefits of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Jeffrey S. Goldberg (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (05-BLA-5209) of Administrative Law Judge Janice K. Bullard 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 evidence failed to establish the existence of coal workers' pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings that the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), and that the medical opinion evidence failed to establish a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(iv). In addition, claimant contends that, since the administrative law judge concluded that Dr. Simpao's report was neither well-reasoned nor well-documented and the "physician failed to make any finding regarding whether the claimant was disabled from a pulmonary standpoint," the Director, Office of Workers' Compensation Programs (the Director), failed to fulfill his statutory obligation to provide claimant with a complete, credible pulmonary evaluation pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b).[1] Employer responds, urging that the denial of benefits be affirmed. The Director responds, asserting that the Board should reject claimant's argument that the case must be remanded for the Director to provide claimant with a complete pulmonary evaluation. The Director contends that even though Dr. Simpao's opinion on the issue of total disability is incomplete, remand of the case is unnecessary because the administrative law judge properly credited the opinions of Drs. Dahhan and Broudy, that claimant was not totally disabled, and claimant has not challenged that finding.[2]

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

[1] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4) or total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] The Director, Office of Workers' Compensation Programs, also asserts that claimant was provided a complete, credible evaluation regarding the existence of pneumoconiosis since Dr. Simpao diagnosed the existence of pneumoconiosis but, the administrative law judge, within her discretion, credited the opinions of Drs. Dahhan and Broudy as more probative on the issue.

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 of the elements 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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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 rational, supported by substantial evidence, and in accordance with law. It is, therefore, affirmed. Contrary to claimant's assertions, the administrative law judge properly considered the qualifications of the physicians and the numerical superiority of the negative x-ray evidence in weighing the x-ray evidence and finding that it did not establish the existence of pneumoconiosis at Section 718.202(a)(1).[3] 20 C.F.R. §718.202(a)(1);[4] *Staton v. Norfolk & Western Railway Co.*, 65

[3] The administrative law judge concluded that all three x-rays of record were negative for pneumoconiosis. She concluded that the November 20, 2003 x-ray was negative because, although it was initially read positive by Dr. Simpao, who had no radiological credentials, it was subsequently read negative by Dr. Halbert, a dually-qualified Board-certified radiologist and B reader. She concluded that the February 26, 2004 x-ray and the May 27, 2005 x-rays were negative because each x-ray was read negative by a B reader, *i.e.*, Dr. Dahhan and Dr. Broudy, and there were no contrary positive readings of those x-rays. *See* Decision and Order at 5-6; Director's Exhibits 11, 15; Employer's Exhibits 1, 2.

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 Co. Inc. of Va. 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). A Board-certified radiologist is a physician who has been certified by the American Board of Radiology as having a particular expertise in the field of radiology.

[4] Section 718.202(a)(1) provides that where two or more x-ray reports are in conflict, consideration *shall* be given to the radiological qualifications of the physicians interpreting such x-rays. 20 C.F.R. §718.202(a)(1).

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*); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).[5] Likewise, claimant's contention that the administrative law judge "may have selectively analyzed" the x-ray evidence is rejected as claimant points to no evidence or finding by the administrative law judge that supports this contention. *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). The administrative law judge's finding that the existence of coal workers' pneumoconiosis was not established by x-ray evidence at Section 718.202(a)(1) is, therefore, affirmed. Further, claimant's argument that the case must be remanded for the Director to provide claimant with a complete, credible pulmonary evaluation is rejected for the reasons set forth by the Director. *See* 30 U.S.C. §923(b); 20 C.F.R. §§725.405, 406; *Barnes v. ICO Corp.*, 31 F.3d 673, 18 BLR 2-319 (8th Cir. 1994); *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25, 2-31 (8th Cir. 1984); *see also Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

We, therefore, affirm the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis. 20 C.F.R. §718.202(a)(1)-(4). Because the evidence fails to establish the existence of pneumoconiosis, an essential element of entitlement, we need not consider claimant's argument concerning total respiratory disability at Section 718.204(b)(2)(iv). *See Anderson*, 12 BLR at 1-113; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

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[5] 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*); Director's Exhibit 3.

Accordingly, the administrative law judge's Decision and Order Denying 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