BRB No. 08-0197 BLA

J.E.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHIPYARD RIVER COAL TERM COMPANY	)	
	)	
	)	DATE ISSUED: 09/29/2008
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 Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

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

Sarah M. Hurley (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting 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 (06-BLA-5749) of Administrative Law Judge Kenneth A. Krantz 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). This case involves a claim filed on April 18, 2001. After

crediting claimant with fifteen and three-quarter years of coal mine employment,[1] the administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). Claimant also argues that the administrative law judge erred in finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant further contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim. Employer responds in support of the administrative law judge's denial of benefits. The Director has filed a limited response, requesting that the Board reject claimant's request that the case be remanded, based upon the Director's alleged failure to provide claimant with a complete, credible pulmonary evaluation.[2]

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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 under 20 C.F.R. Part 718 in a living miner's claim, a 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); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Claimant contends that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R.

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

[2] Because no party challenges the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3), these findings are affirmed. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

§718.202(a)(1). The x-ray evidence consists of five interpretations of three x-rays taken on April 21, 2001, August 3, 2001, and August 12, 2002. While Dr. Baker, a physician with no special radiological qualifications,[3] interpreted the April 21, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 15, Dr. Kendall, a B reader and Board-certified radiologist, interpreted this x-ray as negative for the disease. Director's Exhibit 9. The administrative law judge acted within his discretion in crediting Dr. Kendall's negative interpretation of the April 21, 2001 x-ray, over Dr. Baker's positive interpretation, based upon Dr. Kendall's superior qualifications. 20 C.F.R. §718.202(a)(1); *see Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 10.

Similarly, Dr. Hussain, who has no special radiological qualifications, interpreted the August 3, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 13, and Dr. Kendall, a B reader and Board-certified radiologist, interpreted this x-ray as negative for the disease.[4] Director's Exhibit 23. The administrative law judge acted within his discretion in crediting Dr. Kendall's negative interpretation of the August 3, 2001 x-ray, over Dr. Hussain's positive interpretation, based upon Dr. Kendall's superior qualifications. *See Sheckler*, 7 BLR at 1-131; Decision and Order at 10-11.

The only other x-ray interpretation of record is negative for pneumoconiosis.[5] Therefore, the administrative law judge found that the x-ray evidence did not establish the existence of pneumoconiosis.

The administrative law judge based his finding on a proper qualitative analysis of the x-ray evidence. *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); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and that he "may have

[3] The administrative law judge noted that Dr. Baker was not qualified as a B reader when he rendered his interpretation of the April 21, 2001 x-ray. Decision and Order at 10.

[4] Dr. Sargent, a B reader and Board-certified radiologist, reviewed the August 3, 2001 x-ray for its film quality only. Director's Exhibit 14.

[5] Dr. Dahhan, a B reader, interpreted the August 12, 2002 x-ray as negative for pneumoconiosis. Director's Exhibit 9.

'selectively analyzed'" the readings, lack merit.[6] Claimant's Brief at 3. We, therefore, affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Claimant also contends that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant specifically contends that the administrative law judge erred in finding that Dr. Baker's opinion[7] did not establish the existence of pneumoconiosis. We disagree. The administrative law judge permissibly discredited Dr. Baker's diagnosis of coal workers' pneumoconiosis because he found that it was not sufficiently reasoned, noting that the diagnosis was based only on a positive x-ray interpretation and a history of coal dust exposure. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); Decision and Order at 12; Director's Exhibit 15. The administrative law judge also noted that the April 21, 2001 x-ray that Dr. Baker interpreted as positive for pneumoconiosis was interpreted by Dr. Kendall, a better qualified physician, as negative for pneumoconiosis, thus calling into question the reliability of Dr. Baker's opinion. *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 12; Director's Exhibits 9, 15.

Dr. Baker also diagnosed resting arterial hypoxemia, chronic obstructive airway disease, and chronic bronchitis. Director's Exhibit 15. Because Dr. Baker did not expressly list an etiology for these diseases, theses diagnoses are insufficient to constitute a finding of "legal" pneumoconiosis.[8] 20 C.F.R. §718.201(a)(2). Moreover, to that extent that Dr. Baker attributed claimant's arterial hypoxemia, chronic obstructive airway

[6] Claimant has provided no support for his assertion that the administrative law judge "may have 'selectively analyzed' the x-ray evidence." Claimant's Brief at 3.

[7] In a report dated April 21, 2001, Dr. Baker diagnosed "Coal Workers' Pneumoconiosis, Category 1/0, on the basis of 1980 ILO Classification – based on abnormal x-rays and significant history of coal dust exposure." Director's Exhibit 15.

[8] After diagnosing four separate pulmonary conditions (pulmonary coal workers' pneumoconiosis, resting arterial hypoxemia, chronic obstructive airway disease, and chronic bronchitis), Dr. Baker checked a box indicating that claimant's "disease" was the result of exposure to coal dust. Director's Exhibit 15. In explaining the basis for his finding, Dr. Baker stated: "[Claimant] has abnormal chest x-rays and significant history of dust exposure and x-ray evidence of pneumoconiosis and no other condition to account for these x-ray changes." *Id.* Thus, although Dr. Baker attributed claimant's coal workers' pneumoconiosis to coal dust exposure, he did not expressly address the etiology of the other diagnosed pulmonary conditions.

disease, and chronic bronchitis to coal dust exposure, the administrative law judge discredited those opinions because Dr. Baker did not have an accurate understanding of claimant's smoking history.[9] *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Rickey v. Director, OWCP*, 7 BLR 1-106 (1984) (holding that an administrative law judge may properly discredit the opinion of a physician that is based upon an inaccurate or incomplete picture of the miner's health); Decision and Order at 12.

Claimant's remaining statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that the medical opinion evidence did not establish the existence of pneumoconiosis. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §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).

In light of our affirmance of the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Claimant also contends that the Director failed to provide him with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *see Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Pettry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We disagree. In this case, claimant selected Dr. Hussain to perform his Department of Labor sponsored pulmonary evaluation. *See* Director's Exhibit 7. Dr. Hussain examined claimant on August 3, 2001. In a report dated August 3, 2001, Dr. Hussain diagnosed pneumoconiosis.[10] *Id.* Dr. Hussain's

[9] In his April 21, 2001 medical report, Dr. Baker noted that claimant smoked up to one and one-half packs a day for twenty years. Director's Exhibit 15. Although Dr. Baker acknowledged that claimant continued to smoke, he noted that claimant was down to one-fourth of a pack a day. *Id.* By contrast, the administrative law judge found that claimant had a smoking history of one to one and one-half packs a day for over thirty years. Decision and Order at 3, 12.

[10] On its face, Dr. Hussain's opinion is complete. Dr. Hussain conducted a

diagnosis of pneumoconiosis, based upon a positive x-ray, was neither unreasoned nor undocumented. Although Dr. Hussain's pulmonary evaluation was complete, documented, and inherently credible, the administrative law judge properly questioned the positive x-ray interpretation upon which the doctor relied because a better qualified physician interpreted the x-ray as negative for pneumoconiosis.[11] Decision and Order at 12. Under these circumstances, we agree with the Director, whose duty it is to ensure the proper enforcement and lawful administration of the Act, *see Hodges*, 18 BLR at 1-93; *Pendley v. Director, OWCP*, 13 BLR 1-23 (1989) (*en banc*), that he provided claimant with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim.

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physical examination, recorded claimant's symptoms as well as his employment, medical and social histories, obtained an x-ray, EKG, pulmonary function and arterial blood gas studies, and addressed all of the elements of entitlement. Director's Exhibits 10, 29.

[11] Although Dr. Hussain also diagnosed chronic obstructive pulmonary disease, the administrative law judge noted that the doctor attributed this condition to claimant's tobacco abuse. Decision and Order at 8; Director's Exhibit 10.

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