BRB No. 08-0870 BLA

J.B.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INDEPENDENCE COAL COMPANY, LIMITED	)	DATE ISSUED: 09/21/2009
	)	
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 on Second Remand – Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Kevin J. Cimino (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Second Remand - Denying Benefits (2004-BLA-5044) of Administrative Law Judge Richard A. Morgan, with respect to a claim filed on February 11, 2002, 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).[1]

[1] The Director, Office of Workers' Compensation Programs (the Director), initially filed an appeal in the current case, which was designated as a cross-appeal.

This case is before the Board for a third time.[2] In its most recent decision, the Board vacated the denial of benefits on the ground that the administrative law judge erred in his consideration of the conflicting x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). *J.B. v. Independence Coal Co., LTD*, BRB No. 07-0275 BLA (Dec. 27, 2007) (unpub.). In addition, because the administrative law judge relied upon the x-ray evidence in making his credibility determinations at 20 C.F.R. §718.202(a)(4), the Board also vacated his findings as to the medical opinion evidence. On remand, in his September 12, 2008 decision, the administrative law judge reconsidered the x-ray and medical opinion evidence, in light of the Board's instructions, and concluded that claimant had not established the presence of pneumoconiosis under 20 C.F.R. §718.202(a)(1) or (4). The administrative law judge also found that claimant failed to establish that his total disability was due to pneumoconiosis under 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

Claimant appeals, arguing that the administrative law judge incorrectly weighed the physician's x-ray interpretations under 20 C.F.R. §718.202(a)(1). In addition, claimant asserts that the administrative law judge erred in failing to find legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Further, claimant argues that, in light of the administrative law judge's errors regarding the existence of pneumoconiosis,

---

However, the Board granted Director's motion to dismiss his appeal pursuant to 20 C.F.R. §802.401. *J.B. v. Independence Coal Co., LTD*, BRB No. 08-0870 BLA-A (Dec. 10, 2008) (unpub. Order).

[2] The Board initially affirmed the administrative law judge's finding of seventeen years of coal mine employment and that claimant was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv) but vacated the April 7, 2005 Decision and Order Awarding Benefits on the ground that the administrative law judge erred in excluding employer's second rebuttal interpretation of a February 5, 2003 x-ray. [*J.B.*] *v. Independence Coal Co., LTD*, BRB No. 05-0621 BLA (Mar. 31, 2006) (unpub.). Consequently, the Board vacated the administrative law judge's findings as to the existence of pneumoconiosis and total disability due to pneumoconiosis. The administrative law judge was instructed on remand to admit employer's rebuttal x-ray interpretation and then to consider whether claimant had satisfied his burden of proof pursuant to 20 C.F.R. §§ 718.202(a)(1), (4) and 718.204(c). *Id*. On remand, in his November 28, 2006 Decision and Order on Remand Denying Benefits, the administrative law judge admitted the additional x-ray interpretation, weighed the conflicting x-rays and medical opinions, and determined that claimant failed to establish the existence of pneumoconiosis. Accordingly, the administrative law judge denied benefits and claimant appealed.

his findings concerning total disability causation pursuant to 20 C.F.R. §718.204(c) are also in error. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.[4] 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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, 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; *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In evaluating whether claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), the administrative law judge considered eleven interpretations of four chest x-rays dated April 2, 2002, February 5, 2003, August 5, 2003, and December 15, 2003. Drs. Ranavaya and Miller interpreted the April 2, 2002 x-ray as positive for simple pneumoconiosis, while Dr. Scatarige interpreted the x-ray as negative. Director's Exhibits 15, 24; Employer's Exhibit 4. Drs. Baker and Miller interpreted the February 5, 2003 x-ray as positive for simple pneumoconiosis and Drs. Wiot and Meyer interpreted it as negative. Director's Exhibits 23, 24; Employer's Exhibits 7, 8. The August 5, 2003 x-ray was read as positive for simple pneumoconiosis by Dr. Miller and as negative for pneumoconiosis by Dr. Zaldivar. Claimant's Exhibit 1; Employer's Exhibit 1. Finally, the December 15, 2003 x-ray was interpreted by Dr. Miller as positive for simple pneumoconiosis and as negative by Dr. Willis. Claimant's Exhibit 2; Employer's Exhibit

[3] We affirm the administrative law judge's findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3), as they are not challenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 7.

[4] The record reflects that the miner's coal mine employment was in West Virginia. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

6. All of the physicians providing interpretations of the x-rays are B readers. In addition, Drs. Scatarige, Miller, Wiot, Meyer, and Willis are dually-qualified as Board-certified radiologists.

Concerning the interpretations of the April 2, 2002 x-ray, the administrative law judge found that Dr. Ranavaya's positive x-ray reading "is not as probative" as the positive reading by Dr. Miller or the negative reading by Dr. Scatarige because Dr. Ranavaya, unlike the other two physicians, is not a Board-certified radiologist. Decision and Order at 5. However, the administrative law judge determined that the credentials, experience, and education of Drs. Miller and Scatarige are comparable. Therefore, the administrative law judge found that "the April 2, 2002 x-ray is marginally 'positive' for pneumoconiosis *based strictly on the weighing of these three x-ray readings*." *Id*. (emphasis in original).

As to the February 5, 2003 x-ray, the administrative law judge accorded less weight to Dr. Baker's positive reading due to the fact that he is not a Board-certified radiologist. Decision and Order at 5. In addition, the administrative law judge determined that while the credentials of Drs. Miller and Meyer "are roughly comparable,…Dr. Wiot's overall radiological credentials are superior to both of them[,]" as Dr. Wiot has been a Board-certified radiologist since 1959, served as a professor of radiology, and been on national and international committees concerning radiology and the International Labour Office (ILO) classification system. *Id*. at 5-6. Consequently, the administrative law judge found that the x-ray is "clearly 'negative' for pneumoconiosis." *Id*. at 6.

Regarding the August 5, 2003 x-ray, the administrative law judge accorded less weight to Dr. Zaldivar's negative reading since he is not a Board-certified radiologist and greater weight to Dr. Miller's positive interpretation based on his Board-certification in radiology. Decision and Order at 6. As a result, the administrative law judge determined that the August 5, 2003 x-ray "is 'positive' for pneumoconiosis *based strictly on the weighing of these two x-ray readings*." *Id*. (emphasis in original).

The administrative law judge found that the December 15, 2003 x-ray is in equipoise because Drs. Miller and Willis, the two physicians interpreting the x-ray as positive and negative, respectively, are both B readers and Board-certified radiologists with similar credentials. Decision and Order at 6.

Based solely on his analysis of "each chest x-ray *individually*," the administrative law judge found "two of the four x-rays are positive for pneumoconiosis, while one is negative for pneumoconiosis, and one is in equipoise." Decision and Order at 6. However, the administrative law judge determined that based on "*the totality of the x-ray evidence*," the multiple conflicting x-ray interpretations by well-qualified B readers and

Board-certified radiologists, including the most recent film, render the x-ray evidence inconclusive. Decision and Order at 6-7 (emphasis in original). The administrative law judge gave more weight to the eight interpretations, four positive for pneumoconiosis and four negative, by dually-qualified radiologists. However, the administrative law judge noted that of the eight readings, Dr. Miller was the only dual1y-qualified radiologist to read the four x-rays as positive for pneumoconiosis. *Id*. In addition, the administrative law judge reiterated his previous finding that "Dr. Wiot has the best radiological credentials of any of the physicians of record, including Dr. Miller." *Id*. Therefore, the administrative law judge concluded that the four negative readings by Drs. Scatarige, Wiot, Meyer, and Willis are "somewhat more probative" than the four positive readings, which were interpreted by Dr. Miller. *Id*. at 6-7. Further, the administrative law judge found that:

> Dr. Wiot's contradiction of one of the four positive readings by Dr. Miller tends to undermine Dr. Miller's similar (1/0) readings of the other chest x-rays. At minimum, Dr. Wiot's negative reading of the February 5, 2003 x-ray not only contradicts Dr. Miller's positive reading of the same film, but also undermines the positive interpretations of the earlier x-ray, dated April 2, 2002. In view of the progressive and irreversible nature of pneumoconiosis, my crediting of Dr. Wiot's negative reading of the February 5, 2003 x-ray, buttresses the negative reading by Dr. Scatarige of the April 2, 2002 x-ray, and undermines the positive readings by Drs. Miller and Ranavaya of the April 2, 2002 x-ray. This, in turn, reverses my preliminary finding that the chest x-ray, dated April 2, 2002, is marginally positive for pneumoconiosis (which was based only on the interpretations of that specific x-ray). To the contrary, Dr. Wiot's negative reading of the February 5, 2003 x-ray, which I find most probative in view of his superior radiological qualifications, precludes a finding that the April 2, 2002 x-ray was positive for pneumoconiosis.

Id. at 7. After noting that the most recent x-ray evidence is in equipoise, the administrative law judge determined that because the x-ray evidence was "at best" inconclusive, claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1). *Id*.

On appeal, claimant argues that the administrative law judge erred in his consideration of the x-ray evidence because he assigned greater weight to Dr. Wiot's opinions without explaining why Dr. Wiot's qualifications, specifically his experience as a professor of radiology, would entitle his opinion to more weight than a physician who practices clinical medicine. Similarly, claimant argues that the administrative law judge should not have given controlling weight to Dr. Wiot's February 5, 2003 x-ray interpretation since he did not interpret any of the other x-rays in evidence. In addition,

claimant asserts that "the administrative law judge failed to properly analyze the x-ray evidence in light of the fact that he did not properly weigh each x-ray against the other x-rays." Claimant's Brief at 16, *citing Adkins v. Director, OWCP*, 958 F.2d 49 (4th Cir. 1992). Further, claimant argues that the administrative law judge did not provide an adequate reason for affording Dr. Miller's opinion less weight when compared to the opinions of Drs. Scatarige, Wiot, Meyer, and Willis.

Employer responds, arguing that the administrative law judge has substantial discretion in weighing the evidence and it is the administrative law judge's "sole authority to make credibility determinations and resolve inconsistencies in the evidence." Employer's Brief at 9, *citing Grizzle v. Picklands Mather & Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). Employer asserts that the administrative law judge properly accorded the greatest weight to Dr. Wiot's negative x-ray interpretation due to his qualifications, which include recognition as a C reader,[5] because 20 C.F.R. §718.202(a) states that the radiological qualifications of the readers must be considered when there is conflicting x-ray evidence. Employer's Brief at 11. Further, employer argues that the administrative law judge's analysis complied with *Adkins*, as well as the regulations, and that the administrative law judge correctly afforded less weight to Dr. Miller's interpretation because he was the only dually-qualified B reader and Board-certified radiologist to give a positive interpretation of the x-rays.

Claimant is accurate in stating that administrative law judges are not required to give physicians who are professors in radiology, greater weight; however, it is permissible for them to do so. *See Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993). The administrative law judge permissibly determined that Dr. Wiot's x-ray reading was entitled to greater weight due to several factors, one of which was his previous position as a professor of radiology at the University of Cincinnati from 1966 to 1998 and his current position as professor emeritus of radiology at the same institution. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997). In addition, the administrative law judge permissibly relied on Dr. Wiot's status as a Board-certified radiologist for "significantly longer than any other physician of record," his position as a professor of radiology for over twenty years, and his involvement serving on national and international committees regarding diagnostic radiology and the ILO classification system. Decision and Order at 6; s*ee Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998).

[5] 42 C.F.R. §37.51 formerly provided for certification as a C reader, a level higher than that of a B reader. *See Alley v. Riley Hall Coal Co.*, 6 BLR 1-376 (1983). However, this certification no longer exists.

Further, the administrative law judge acted within his discretion in weighing the totality of the x-ray evidence by affording greater weight to the eight interpretations by dually-qualified B readers and Board-certified radiologists, four of which were positive and four of which were negative. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). As a result, we affirm the administrative law judge's finding that "[a]t best, the multiple conflicting x-ray interpretations by well-qualified B[ ]readers and Board-certified radiologists . . . render the x-ray evidence inconclusive." Decision and Order at 7. Therefore, we also affirm the administrative law judge's determination that claimant failed to meet his burden of proof under 20 C.F.R. §718.202(a)(1). Because we affirm the administrative law judge's finding at 20 C.F.R. §718.202(a)(1) on these grounds, it is not necessary to address claimant's additional arguments regarding the administrative law judge's consideration of the x-ray evidence.

In reaching his decision as to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Ranavaya, Baker, Zaldivar, and Crisalli.

Dr. Ranavaya examined claimant, at the request of the Department of Labor, on April 2, 2002. Director's Exhibit 11. Dr. Ranavaya diagnosed pneumoconiosis based on x-ray evidence and claimant's twenty-seven years of occupational exposure to dust in underground coal mining, chronic obstructive pulmonary disease (COPD) "[m]ost likely caused by a [thirty-three] pack year history of cigarette smoking[,]" and hypertension based upon claimant's history. *Id*.

Dr. Baker examined claimant, on February 5, 2003, and diagnosed claimant with coal workers' pneumoconiosis based on an abnormal chest x-ray and coal dust exposure, COPD with a moderate obstructive defect due to the results of the pulmonary function study, hypoxemia, and chronic bronchitis. Director's Exhibit 23. Dr. Baker found that the pneumoconiosis was due to coal dust exposure and the other problems he diagnosed were due to both coal dust exposure and cigarette smoking. *Id*. In addition, on a questionnaire, dated February 5, 2003, Dr. Baker checked "yes" concerning whether claimant has an occupational lung disease caused by his coal mine employment and indicated that he based this conclusion on an abnormal chest x-ray and coal dust exposure. Regarding the etiology of the pulmonary impairment, Dr. Baker listed cigarette smoking and coal dust exposure. *Id*.

Dr. Zaldivar examined claimant on August 5, 2003, and reviewed additional medical data. Employer's Exhibit 1. Dr. Zaldivar found no evidence of pneumoconiosis on the chest x-ray but diagnosed a moderate reversible airway obstruction, moderate diffusion impairment, and airtrapping by lung volume. *Id*. In addition, Dr. Zaldivar concluded that "[t]here is no evidence in this case to justify a diagnosis of coal workers' pneumoconiosis nor any dust disease of the lungs." *Id*. He also found that while

claimant has a pulmonary impairment, the impairment is due to asthma and unrelated to coal mining. Further Dr. Zaldivar attributed claimant's diffusion impairment solely to his smoking habit.[6] *Id*. In his deposition, Dr. Zaldivar testified that claimant's pulmonary function study showed significant improvement after bronchodilator, which Dr. Zaldivar stated is indicative of bronchospasm, a manifestation of asthma. Employer's Exhibit 11. Dr. Zaldivar also provided that bronchodilators will not help an individual who has coal workers' pneumoconiosis because pneumoconiosis causes "a mechanical impairment" and "[t]here is no medication that can fix a mechanical problem." *Id*.

Dr. Crisalli reviewed medical data related to claimant and conducted an examination on December 15, 2003. Employer's Exhibit 5. Dr. Crisalli found no evidence of coal workers' pneumoconiosis but diagnosed emphysema, asthma, and hypertension, relying on chest x-ray evidence and the results of the pulmonary function studies and blood gas studies. *Id*. Dr. Crisalli found that the pulmonary function study results were consistent with the diagnosis of emphysema and asthma because "[t]he presence of air trapping and the pattern of the diffusion impairment is consistent with asthma." *Id*. In his deposition, Dr. Crisalli stated that claimant's response to bronchodilators is consistent with a diagnosis of asthma "[b]ecause reversibility is not seen in coal workers' pneumoconiosis." Employer's Exhibit 12. Dr. Crisalli opined that "coal dust exposure does not in any way contribute to asthma" but recommended that claimant's asthma be properly treated and that he quit smoking to improve his impairment. *Id*.

Because Drs. Baker, Zaldivar, and Crisalli are Board-certified in pulmonary medicine, the administrative law judge found their credentials to be superior to those of Dr. Ranavaya, who is Board-certified in occupational medicine. Decision and Order at 12. In addition, the administrative law judge found that "the medical opinions of Drs. Zaldivar and Crisalli are much better reasoned and documented than those of Drs. Ranavaya and Baker." *Id*.

The administrative law judge gave "little weight" to the opinion of Dr. Ranavaya because it was based upon an inflated coal mine employment history and a "questionable"[7] positive x-ray reading. Decision and Order at 13. Further, the

---

[6] Dr. Zaldivar also found a high carboxyhemoglobin level which, he opined, is evident of a current smoker of approximately a pack of cigarettes a day.

[7] The administrative law judge refers to the positive reading of the April 2, 2002 x-ray as questionable because, while he initially found that the x-ray was marginally positive for pneumoconiosis, due to Dr. Wiot's negative reading of the February 5, 2003 x-ray, Dr. Wiot's superior credentials, and the progressive and irreversible nature of

administrative law judge found that Dr. Ranavaya's opinion is equivocal as to the etiology of claimant's disease and is based upon relatively limited and older data from his examination of claimant. *Id*. As to Dr. Baker, the administrative law judge gave "little weight" to his opinion as well because it was based upon a "questionable"[8] positive x-ray reading and coal dust exposure. The administrative law judge also found that Dr. Baker's responses were cursory, not well-reasoned, and based on the limited data he acquired during his examination of claimant. *Id*.

The administrative law judge determined that Dr. Zaldivar's reliance on his negative reading of the August 5, 2003 x-ray, which was determined to be positive for pneumoconiosis, based only on the readings of that x-ray individually, did not detract from the credibility of his opinion because the administrative law judge ultimately determined that claimant did not prove the existence of pneumoconiosis based solely on the x-ray evidence. Decision and Order at 13. Also, the administrative law judge gave added weight to the opinions of Drs. Zaldivar and Crisalli because they were not based solely on their evaluations of claimant, and they provided "a much more thorough analysis of the evidence, and explained why the pattern of impairment is consistent with pneumoconiosis and unrelated to coal mine dust exposure." *Id*. Accordingly, the administrative law judge concluded that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(4). In addition, when weighing all of the evidence together under 20 C.F.R. §718.202(a), the administrative law judge found that the existence of clinical or legal pneumoconiosis had not been established by a preponderance of the evidence. *Id*. at 13-14.

On appeal, claimant argues that the administrative law judge should not have discounted Dr. Ranavaya's opinion on the basis of an inflated coal mine employment history because even if Dr. Ranavaya was in error, claimant still had a significant history that supports Dr. Ranavaya's conclusions. Also, claimant asserts that since the administrative law judge erred in finding the chest x-ray evidence to be negative, he erred in finding that Dr. Ranavaya's opinion was entitled to little weight due to the questionable positive x-ray reading. Similarly, claimant argues that the administrative law judge would not have discredited Dr. Baker's opinion if the administrative law judge

---

pneumoconiosis, he ultimately concluded that it was negative for pneumoconiosis. Decision and Order at 13 n.9.

[8] The administrative law judge refers to Dr. Baker's reliance on the February 5, 2003 x-ray as questionable because he determined that the negative readings of Drs. Wiot and Meyer outweighed the positive readings of Drs. Baker and Miller. Decision and Order at 13 n.10.

had properly found that the x-ray evidence was positive for pneumoconiosis. Further, claimant states that, contrary to the administrative law judge's finding that Dr. Baker's opinion is cursory and not well-reasoned, "[s]imilar opinions of Dr. Baker [have been] repeatedly found to constitute substantial evidence of total disability due to coal mine dust exposure." Claimant's Brief at 18-19. Regarding the opinions of Drs. Zaldivar and Crisalli, claimant argues that they are not entitled to great weight because they rely on x-ray evidence that was incorrectly weighed by the administrative law judge.

We reject claimant's contentions and affirm the administrative law judge's finding that the medical opinion evidence does not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Contrary to claimant's assertions, the administrative law judge permissibly afforded less weight to Dr. Ranavaya's opinion based on his reliance on a twenty-seven year coal mine employment history as it was ten years more than the amount credited by the administrative law judge. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993). In addition, the administrative law judge rationally discounted Dr. Ranavaya's opinion because he found it was equivocal and based on limited and older data. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984).

The administrative law judge also acted within his discretion in determining that Dr. Baker's opinion was cursory and not well-reasoned. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). In addition, the administrative law judge permissibly found that Dr. Baker's opinion was based upon limited data since he only examined claimant and did not review any other evidence. *See Sabett*, 7 BLR at 1-301 n.1.

Further, the administrative law judge rationally afforded greater weight to the opinions of Drs. Zaldivar and Crisalli because, unlike Drs. Ranavaya and Baker, they reviewed and considered more extensive medical evidence, including the opinions of other physicians, x-ray interpretations, and pulmonary function and blood gas study results. *See Sabett*, 7 BLR at 1-301 n.1. The administrative law judge also permissibly determined that the opinions of Drs. Zaldivar and Crisalli were more thorough and explained why claimant's impairment is not due to pneumoconiosis. *Compton*, 211 F.3d at 211, 22 BLR at 2-175.

Based on these findings, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Further, in light of our affirmance of the administrative law judge's findings at 20 C.F.R. §718.202(a)(1), (4), we also affirm the administrative law judge's conclusion that, based upon a weighing of all of the evidence, claimant failed to meet his burden of establishing the existence of pneumoconiosis at 20 C.F.R. §718.202(a).

Because claimant failed to prove the existence of pneumoconiosis, an essential element of entitlement, we affirm the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's arguments regarding total disability causation at 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order on Second Remand – Denying Benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge