BRB No. 97-1770 BLA

JAMES L. MULLINS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LITTLE S COAL CORPORATION	)	DATE ISSUED:
	)	
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 of Edward J Murty, Jr., Administrative Law Judge, United States Department of Labor.

James L. Mullins, Wise, Virginia, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson and Kilcullen), Washington, D.C., for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant,[1] without the assistance of counsel,[2] appeals the Decision and Order (97-BLA-0972) of Administrative Law Judge Edward J. Murty, Jr. denying benefits on

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[1] Claimant is James L. Mullins, the miner, who filed his claim for benefits on May 16, 1994. Director's Exhibit 1.

[2] Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

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, applying the regulations at 20 C.F.R. Part 718,credited the miner with twenty-seven years of coal mine employment and found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order at 2-4. The administrative law judge also found the evidence insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). Decision and Order at 2-4. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer has not responded, and the Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[3]

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by the Act, 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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[3] We affirm the administrative law judge's length of coal mine employment finding as it is not adverse to claimant and unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to Section 718.202(a)(1), the administrative law judge found that the x-ray evidence fails to establish the existence of pneumoconiosis inasmuch as the record contains only one x-ray interpretation read as positive for pneumoconiosis by Dr. Paranthaman, a B-reader.[4] Decision and Order at 2. The administrative law judge noted that two other physicians, Drs. Francke and Sargent, both B-readers and board-certified radiologists, found this x-ray negative for pneumoconiosis and that none of the other x-ray readings in the record "makes any reference to pneumoconiosis." *Id.* Therefore, we hold that the administrative law judge permissibly found that this single positive reading was "not convincing" evidence as to the presence of pneumoconiosis.[5] *Id; see Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); *see also Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Accordingly, we affirm the administrative law judge's Section 718.202(a)(1) finding.

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Paranthaman, Kanwal, and Sy, all finding pneumoconiosis. Decision and Order at 4. The administrative law judge discredited the opinions of Drs. Paranthaman and Kanwal by stating that the x-ray readings by the majority of B-readers are convincing proof that their diagnoses of pneumoconiosis are in error. Decision and Order at 4. Section 718.202(a) provides alternative methods of establishing pneumoconiosis, *see Dixon v. North Camp Coal*

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[4] 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 of Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-16 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

[5] We deem harmless error, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), the administrative law judge's failure to discuss specifically Dr. Paranthaman's notation of a Category A opacity, inasmuch as none of the other physicians noted large opacities classified as Category A, B, or C and the administrative law judge noted that this 1/0 x-ray was reread twice by a B-reader as negative for the existence of pneumoconiosis, and was not therefore convincing. Decision and Order at 2; *see* 20 C.F.R. §718.304(a); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Handy v. Director, OWCP*, 16 BLR 1-73 (1990); *see also Ondecko, supra; Edmiston, supra; Sheckler, supra*.

Co., 8 BLR 1-344 (1985); *see generally Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989), and the administrative law judge's reasoning here essentially forecloses the possibility that claimant can establish the existence of pneumoconiosis by medical opinion, simply because it conflicts with the weight of the x-ray evidence, *see Taylor v. Director, OWCP*, 9 BLR 1-22 (1986); *see also Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8 (1996). Inasmuch as the administrative law judge improperly rejected the opinions of Drs. Paranthaman and Kanwal, we vacate the administrative law judge's findings pursuant to Section 718.202(a)(4) and instruct him to reconsider these opinions on remand.

The administrative law judge also stated that "Dr. Sy appears to take the existence of pneumoconiosis as a given in his office notes...and that his report to Dr. Kanwal cannot be said to be a diagnosis of pneumoconiosis." *Id.* The record indicates that Dr. Sy made a notation of coal workers' pneumoconiosis in his office notes. Claimant's Exhibit 2. Because the administrative law judge does not elaborate on why he does not find that Dr. Sy's opinion supports a finding of pneumoconiosis, it is unclear on what basis he is discrediting this opinion. Therefore, on remand we instruct the administrative law judge to reconsider Dr. Sy's opinion inasmuch as he has not provided an adequate reason for discrediting it. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a) by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2); *see McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4 (1987); *see also Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589, 1-591 (1984).

Pursuant to Section 718.204(c)(1), the administrative law judge considered the three non-qualifying[6] pulmonary function studies in the record, but failed to consider the qualifying post-bronchodilator study administered by Dr. Sy, Director's Exhibit 31. Similarly, pursuant to Section 718.204(c)(4), the administrative law judge noted that Dr. Kanwal, claimant's treating physician, found total disability due to chronic lung disease from coal mine employment, but did not provide any rationale for apparently discrediting this opinion. Therefore, as the administrative law judge failed to consider all the relevant evidence at Section 718.204(c) and failed to provide a reason for crediting or discrediting this evidence, we remand this case for him to do so. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a) by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2); *see also Wojtowicz, supra*; *Tenney, supra*.

[6] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(c)(1), (2).

Finally, we instruct the administrative law judge that if on remand he finds total respiratory disability established pursuant to Section 718.204(c), *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*), he must then determine whether claimant's pneumoconiosis was a contributing cause of his totally disabling respiratory impairment pursuant to Section 718.204(b),[7] *see Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990), citing *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part and vacated in part, and this case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

ROY P. SMITH

[7] We instruct the administrative law judge that if on remand he finds that the record does not contain a credible medical opinion provided by the United States Department of Labor (DOL), he must remand this case to the district director so that the DOL can provide claimant with a complete, credible pulmonary evaluation as required by the Act. *See* 20 C.F.R. §§725.405, 725.406; *Hall v. Director, OWCP*, 14 BLR 1-51, 1-54 (1990)(*en banc*); *see also Pettry v. Director, OWCP*, 14 BLR 1-98 (1990)(*en banc*); *see generally Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting
Administrative Appeals Judge