BRB No. 92-1339 BLA

CLARENCE FEE Claimant-Petitioner v. DAN DEL COAL COMPANY, INCORPORATED and KENTUCKY COAL PRODUCERS STATE INSURANCE FUND Employer/Carrier-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	Date Issued: DECISION and ORDER

Appeal of the Decision and Order of Robert L. Cox, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Collett and Buckle), Hyden, Kentucky, for claimant.

James M. Kennedy (Forester, Buttermore, Turner & Lawson, P.S.C.), Harlan, Kentucky, for employer.

Before: DOLDER, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Law Judges.

PER CURIAM:

Claimant appeals the Decision and Order (90-BLA-0149) of Administrative Law Judge Robert L. Cox denying benefits 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). Claimant filed a claim on May 2, 1988. Upon considering the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established ten years of coal mine employment and that claimant failed to establish the existence of pneumoconiosis. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erroneously assigned greater weight to the negative interpretations of B-readers in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Claimant further contends that the administrative law judge failed to consider all of the medical opinions of record pursuant to 20 C.F.R. §718.202(a)(4). Employer responds in support of the administrative law judge's Decision and Order and the Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Initially, the administrative law judge considered the x-ray evidence of record, which consists of twenty-nine interpretations of seven x-rays, pursuant to 20 C.F.R. §718.202(a)(1). Four of these interpretations were positive for pneumoconiosis and only one of these four was by a B-reader. Of the remaining twenty-five negative interpretations, twenty-three were performed by B-readers. *See* Director's Exhibits 16-31, 37, 38; Employer's Exhibits 1-4. The administrative law judge permissibly assigned greater weight to the readings of B-readers and permissibly found that the weight of x-ray evidence was negative for pneumoconiosis. *See* Decision and Order at 4; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Vance v. Eastern Associated Coal Corp.*, 8 BLR 1-68 (1985). As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is affirmed as it is supported by substantial evidence.[1]

[1]Claimant also suggests that the administrative law judge did not apply the true doubt rule when weighing the x-ray evidence, however, he does not support this statement with a discussion of the x-ray evidence and he fails to note that the

The administrative law judge next considered the medical opinion evidence of record, which consists of six medical opinions, pursuant to 20 C.F.R. §718.202(a)(4). Drs. Wright, Dahhan, and Anderson, did not diagnose pneumoconiosis but diagnosed chronic bronchitis unrelated to claimant's coal mine employment. *See* Director's Exhibits 11-13. Drs. Anderson, Penman, and Baker, performed physical exams on claimant and diagnosed pneumoconiosis based on positive x-ray interpretations. *See* Director's Exhibit
38. The administrative law judge erroneously accorded these opinions less weight because they were based on positive x-rays when he had found the weight of the x-ray evidence to be negative for pneumoconiosis. *See* Decision and Order at 6; *Casey v. Director, OWCP*, 7 BLR 1-873 (1985); *Winters v. Director, OWCP*, 6 BLR 1-877 (1984). The administrative law judge also erred in holding that Dr. Baker's statement that claimant's exposure to respirable dust for approximately eleven years was a contributory factor in claimant's chronic bronchitis was not a diagnosis of pneumoconiosis. *See* Decision and Order at 6; 20 C.F.R. §718.201; *Adamson v. Director, OWCP*, 7 BLR 1-229, 1-231, n. 3 (1984). As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is vacated and the case is remanded for further consideration of the evidence pursuant to 20 C.F.R. §718.202(a)(4).

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

---

administrative law judge did not find the x-ray evidence to be equally probative. This argument is therefore rejected. *See King v. Cannelton Industries, Inc.*, 8 BLR 1-146 (1985).

REGINA C. McGRANERY
Administrative Appeals Judge