BRB No. 97-0647 BLA

WILBURN NORTH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY	)	
	)	
and	)	DATE ISSUED:
	)	
EMPLOYERS SERVICE CORPORATION	)	
	)	
Employer/Carrier-Respondents	)	
	)	
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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Harold Rader (Law Offices of Neville Smith) Manchester, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (95-BLA-1869) of Administrative Law Judge Donald W. Mosser denying benefits on a claim[1] 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 claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4) and total disability

[1]Claimant filed his application for benefits on January 11, 1994. Director's Exhibit 1.

pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant argues that the administrative law judge erred in failing to find pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4), and total disability pursuant to 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.[2]

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis under Section 718.202(a)(1). Specifically, claimant avers that the positive x-ray interpretations by Drs. Bushey and Clarke should be accorded determinative weight in view of the fact that these physicians also examined claimant. We disagree. A physician need not conduct a physical examination in order to provide a credible opinion concerning the existence of pneumoconiosis by x-ray interpretation. *Bobick v. Saginaw Mining Co.,* 13 BLR 1-52 (1988); *Alley v. Riley Hall Coal Co.,* 6 BLR 1-376 (1983). In the instant case, the administrative law judge properly found that the positive interpretations provided by Drs. Bushey and Clarke were outweighed by several negative rereadings provided by physicians with superior radiological qualifications. *See* 20 C.F.R. §718.202(a)(1); *see Staton v. Norfolk & Western Ry. Co.*, 65 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); *Dixon v. North Camp Coal Co.,* 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.,* 8 BLR 1-211 (1985); Decision and Order at 7-8. Hence, we affirm the administrative law judge's finding that pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(1).

[2]We affirm the administrative law judge's findings pursuant to 20 C.F.R. § 718.202(a)(2) and (a)(3) inasmuch as these determinations are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983).

Pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge irrationally accorded less weight to the opinions of Drs. Bushey and Clarke, Director's Exhibits 12, 13. Claimant asserts that these physicians' reports are "documented" because they based their respective opinions on claimant's symptomatology, work and smoking histories, positive x-ray readings, and pulmonary studies indicating shortness of breath. The administrative law judge, within a proper exercise of his discretion, discounted the opinions of Drs. Bushey and Clarke because they relied on, *inter alia*, positive x-ray readings of films that were reread by physicians with superior radiological expertise as negative for the existence of pneumoconiosis. *See Director, OWCP v. Rowe,* 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Winters v. Director, OWCP,* 1-877, 1-881 n. 4 (1984). Additionally, the administrative law judge noted that Drs. Bushey and Clarke also relied upon physical examinations and pulmonary function studies, but permissibly found that their opinions were undermined because they failed to explain how their objective test results supported a diagnosis of pneumoconiosis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983) (factfinder required to examine validity of reasoning of medical opinion in light of studies conducted and objective indications upon which medical opinion or conclusion is based). Consequently, the administrative law judge properly determined that the opinions of Drs. Bushey and Clarke were unreasoned. *See Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 8. Furthermore, the administrative law judge properly determined that the opinions of Drs. Broudy and Wicker, that claimant does not have pneumoconiosis, are well reasoned, documented, supported by the objective medical evidence of record, and therefore, entitled to greater weight. *See King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *see also Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); Director's Exhibit 14; Employer's Exhibit 2. Hence, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[3]

Inasmuch as the administrative law judge properly determined that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a), a requisite element of entitlement under Part 718, we affirm the denial of benefits. *Trent v. Director, OWCP,* 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's challenges to the administrative law judge's findings under 20 C.F.R. §718.204(c).

[3]We additionally reject claimant's contention that Dr. Broudy's diagnosis of chronic bronchitis satisfies the legal definition of pneumoconiosis pursuant to 20 C.F.R. §718.201 inasmuch as Dr. Broudy opined that claimant's chronic bronchitis is due to cigarette smoking. Director's Exhibit 13.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge