BRB No. 01-0781 BLA

M. C. SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEW WHITE COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
	)	
Employer/Carrier-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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

W. Barry Lewis (Lewis and Lewis), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-0453) of Administrative Law Judge Daniel J. Roketenetz 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).[1] In this duplicate claim, the administrative law judge found that

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective

claimant's prior claim was finally denied on August 19, 1997, because claimant failed to establish any element of entitlement, and that claimant filed his third claim for benefits on September 30, 1998. The administrative law judge then considered whether the newly submitted evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 under the standard enunciated in *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). After crediting claimant with five and one-half years of coal mine employment, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis and, even assuming that claimant had established the existence of pneumoconiosis, claimant would not be entitled to benefits inasmuch as the evidence, examined in its entirety, failed to establish total disability. Benefits were, accordingly, denied.[2]

On appeal, claimant argues that the administrative law judge erred in not finding the evidence sufficient to establish the existence of pneumoconiosis and total disability. Employer responds, contending that claimant has not specifically challenged any of the administrative law judge's findings, and urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter stating that he will participate in 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).

---

on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] The administrative law judge's findings on length of coal mine employment, responsible operator, and at 20 C.F.R. §718.202(a)(2), (3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant first contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis by relying on the qualifications of the x-ray readers and giving greater weight to the numerical superiority of the negative x-ray readings. Considering the three x-rays of record, the administrative law judge found that they were interpreted by either B-readers or Board-certified, B-readers and were all read negative for the existence of pneumoconiosis. Accordingly, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis based on the x-ray evidence. Claimant's arguments are, accordingly, rejected. Further, contrary to claimant's arguments, the administrative law judge may accord greater weight to the readings of physicians with superior qualifications and may consider the quantity of the evidence in light of those qualifications. *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).

Claimant next contends that the administrative law judge erred in finding that the evidence failed to establish the existence of pneumoconiosis by medical opinion evidence at Section 718.202(a)(4). Specifically, claimant contends that the opinion of Dr. Baker establishes the existence of pneumoconiosis and that the administrative law judge erred in according it less weight based on a discrepancy of only a few years between the length of coal mine employment found by the administrative law judge and that found by the Dr. Baker and because the administrative law judge substituted his conclusion for the doctor's in determining whether the documentation supported the doctor's conclusions.

In finding that the medical opinion evidence did not establish the existence of pneumoconiosis, the administrative law judge accorded greater weight to the opinion of Dr. Dahhan that claimant did not have occupational pneumoconiosis or pulmonary disability secondary to coal dust exposure because it was well-reasoned and well-documented. *See Clark v. Karst Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge permissibly accorded little weight to Dr. Baker's opinion because Dr. Baker relied upon a significantly greater history of years of coal mine employment (15-18) than were found by the administrative law judge (5 ½), and because, while indicating that claimant's respiratory condition was related in part to coal mine employment, Dr. Baker also stated that claimant did not have an occupational lung disease. *See Clark, supra*; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Long v. Director, OWCP*, 7 BLR 1-254 (1984); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985);

Hopton v. United States Steel Corp., 7 BLR 1-12 (1984). Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis. Because we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis on the record before him, an essential element of entitlement, we need not address claimant's argument concerning total disability. *Trent*, *supra*; *Perry*, *supra*.

Accordingly, the Decision and Order of the administrative law judge 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