

BRB No. 05-0604 BLA

RONALD LEE LAWSON )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 UNICORN MINING, INCORPORATED )  
 )  
 and )  
 )  
 BIRMINGHAM FIRE INSURANCE ) DATE ISSUED: 01/31/2006  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of Decision and Order – Denying Benefits of Joseph E. Kane,  
Administrative Law Judge, United States Department of Labor.

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

Timothy J. Walker (Ferreri & Fogle), Lexington, Kentucky, for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H.  
Feldman, Associate Solicitor; Michael J. Rutledge, Counsel for  
Administrative Litigation and Legal Advice), Washington, D.C., for the  
Director, Office of Workers' Compensation Programs, United States  
Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5845) of Administrative Law Judge Joseph E. Kane, 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). The administrative law judge credited claimant with 16.7 years of coal mine employment, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202, or total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant asserts that the administrative law judge erred in weighing the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). Claimant also asserts that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). In addition, claimant contends that the Director, Office of Workers’ Compensation Programs (the Director), failed to fulfill his statutory duty to provide claimant with a credible pulmonary evaluation.<sup>1</sup> Employer responds, urging affirmance of the denial of benefits. The Director responds by letter, urging affirmance of the administrative law judge’s Decision and Order. The Director also urges the Board to reject claimant’s assertion that he was not provided a credible pulmonary evaluation.

The Board’s scope of review is defined by statute. The administrative law judge’s Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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).

We first address claimant’s assertions regarding the administrative law judge’s consideration of the x-ray evidence pursuant to Section 718.202(a)(1). Specifically, claimant contends that the administrative law judge improperly relied upon the qualifications of the physicians interpreting the x-rays as negative, and on the numerical superiority of the x-ray evidence.<sup>2</sup> The administrative law judge considered the

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<sup>1</sup> We affirm the administrative law judge’s finding of 16.7 years of coal mine employment, his finding that claimant has not established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4), and his finding that claimant has not established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), as these findings are not challenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>2</sup> The record contains two readings of one x-ray taken on August 10, 2001. Dr. Hussain, who is not a B reader or a Board-certified radiologist, read the film as positive for pneumoconiosis. Director’s Exhibit 7. Dr. Wiot, a B reader and Board-certified

conflicting interpretations of the x-ray, as well as the qualifications of the physicians providing the interpretations, and accorded greater weight to the interpretation of Dr. Wiot, whose qualifications he properly found were superior. Decision and Order at 6. Since the administrative law judge has rationally considered both the quality and the quantity of the x-ray evidence, we affirm his finding that claimant has not carried his burden of establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(1).<sup>3</sup> *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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); *Staton v. Norfolk & Western Railroad 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).

Inasmuch as we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), one of the essential elements of entitlement pursuant to Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we need not address claimant's challenges to the administrative law judge's findings pursuant to Section 718.204(b)(2).

We now turn to claimant's assertion that Dr. Hussain's opinion fails to fulfill the Director's statutory obligation to provide claimant with a credible pulmonary evaluation. Specifically, claimant alleges that, since the administrative law judge found that Dr. Hussain's opinion was entitled to less weight in his evaluation of the evidence at 20 C.F.R. §718.202(a)(4), the Director has not fulfilled his statutory duty. Claimant's Brief at 4. The Director contends, *inter alia*, that "[b]ecause the ALJ merely found Dr. Hussain's diagnosis outweighed by more credible evidence, and not wholly without weight, there is no violation of the Director's duty under [S]ection 413(b) here." Director's Letter at 2.

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radiologist, read the film as negative for pneumoconiosis. Director's Exhibit 8. Dr. Sargent, who is a B reader and Board-certified radiologist, also read the film for quality only. Director's Exhibit 13.

<sup>3</sup> Claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for this contention, however, and the Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence without engaging in a selective analysis. Decision and Order at 12. We therefore reject claimant's suggestion.

The Director has a statutory obligation to provide claimant with an opportunity for a complete pulmonary evaluation, pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b). *See also Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994). Claimant selected Dr. Hussain to perform his pulmonary examination. Dr. Hussain diagnosed pneumoconiosis due to coal dust exposure, and a moderate impairment related to the pneumoconiosis. Dr. Hussain also opined that claimant has the respiratory capacity to perform the work of a coal miner in a dust-free environment. Director's Exhibit 7. In his analysis of the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge accorded "less weight" to Dr. Hussain's opinion because he found this opinion to be based solely on claimant's history of coal dust exposure and a positive x-ray interpretation, which the administrative law judge had found outweighed at Section 718.202(a)(1). Decision and Order at 6. Although the administrative law judge gave less weight to Dr. Hussain's opinion, he did not discredit Dr. Hussain's opinion as devoid of any weight at all. The Director's obligation to provide claimant with a complete pulmonary evaluation does not require the Director to provide claimant with the most persuasive medical opinion in the record. *See generally Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984). Therefore, since the administrative law judge did not find that Dr. Hussain's opinion lacks credibility, we agree with the Director and we reject claimant's assertion that the Director failed to fulfill his statutory obligation.

Because claimant raises no other assertions on appeal, we affirm the administrative law judge's finding that claimant has not established entitlement to benefits. We, therefore, affirm the administrative law judge's denial of benefits.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge