BRB No. 05-0757 BLA

CHARLES ROBERT TEAGUE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GRAYSON COAL & STONE COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
EMPLOYER'S INSURANCE OF WAUSAU	)	DATE ISSUED: 01/31/2006
	)	
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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Charles Robert Teague, Grayson, Kentucky, *pro se*.

Anne Musgrove (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance the counsel,[1] appeals the Decision and Order –

[1] Ms. Susie Davis, a benefits counselor of the Kentucky Black Lung Coalminers and

Denying Benefits (03-BLA-6342) of Administrative Law Judge Thomas F. Phalen, Jr. on a claim[2] 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). Initially, the administrative law judge credited claimant with 9.22 years of qualifying coal mine employment. Next, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718 and found that while claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b), claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. In response, employer/carrier urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 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 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Relevant to Section 718.202(a)(1), the administrative law judge found that the x-ray evidence of record consisted of seven x-ray interpretations of four x-ray films: four interpretations were read as negative for the existence of pneumoconiosis; two interpretations were read as positive for the existence of pneumoconiosis; and one reading was interpreted for film quality only.[3] Decision and Order at 6; Director's Exhibits 10, 15-17; Claimant's

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Widows Association, requested on behalf of claimant that the Board review the administrative law judge's decision, but is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant, Charles R. Teague, filed an application for benefits on May 20, 2002. Director's Exhibit 2.

[3] The administrative law judge excluded x-ray evidence submitted by employer consisting of Dr. Sargent's interpretation of the January 11, 2001 x-ray film and Dr. Wheeler's interpretation of the August 8, 2002 x-ray film because this evidence exceeded the evidentiary limitations set forth in 20 C.F.R. §725.414(a)(3)(i). Decision and Order at 6; *see*

Exhibit 1; Employer's Exhibits 1, 8. The administrative law judge, within a proper exercise of his discretion, considered the radiological expertise of the physicians interpreting the x-rays and found that the positive interpretations of Drs. Gaziano and Forehand, physicians who are B-readers only, were outweighed by the negative interpretations of Drs. Wheeler, Poulos, and Scatarige, physicians who were both Board-certified radiologists and B-readers, because these physicians possessed superior radiological expertise. This was rational. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-280 (6th Cir. 1995); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *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 10. Hence, the administrative law judge conducted a qualitative and quantitative analysis of the x-ray evidence of record in finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis. Accordingly, as the administrative law judge's determination is rational and supported by substantial evidence, we affirm his finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See* 20 C.F.R. §718.202(a)(1).

Likewise, we affirm the administrative law judge's determination that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (a)(3). A review of the record reveals that there is no biopsy evidence; hence, claimant cannot establish the existence of pneumoconiosis under Section 718.202(a)(2). Similarly, a review of the record reveals that none of the presumptions set forth in Section 718.202(a)(3) is applicable to the instant case as the record contains no evidence establishing that claimant has complicated pneumoconiosis, *see* 20 C.F.R. §718.304, the claim was filed after January 1, 1982, *see* 20 C.F.R. §718.305, and this is a living miner's claim, *see* 20 C.F.R. §718.306.

Turning to the administrative law judge's consideration of the medical opinion evidence pursuant to Section 718.202(a)(4), a review of the record reveals that there are five physicians' opinions of record.[4] After conducting a complete pulmonary evaluation of

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Employer's Exhibits 3, 4, 9. An additional interpretation was obtained during claimant's hospital visit on September 27, 2001 when Dr. Casino interpreted a chest x-ray and found no evidence of a discrete nodule in the lower left lobe or any acute findings. Employer's Exhibit 6. Notwithstanding that Dr. Casino's x-ray reading fails to comply with ILO classification standards, his reading was negative for the existence of pneumoconiosis. 20 C.F.R. §§718.102(b), 718.202(a)(1).

[4] The administrative law judge excluded from the record employer's submission of Dr. Westerfield's pulmonary examination and testing of claimant taken on January 11, 2001 because this report and the accompanying documents and tests exceeded the evidentiary

claimant on August 1, 2002, Dr. Gaziano diagnosed coal workers' pneumoconiosis due to coal mine employment. Director's Exhibit 10. Similarly, Dr. Forehand's pulmonary evaluation of claimant on October 13, 2003 revealed evidence of coal workers' pneumoconiosis due to claimant's exposure to high levels of coal mine dust as a blaster/driller. Claimant's Exhibit 1. In a letter dated September 4, 2003, Dr. Rana stated that claimant was being treated for chronic obstructive pulmonary disease and that the environmental conditions in his coal mine employment were a "probable cause" of his lung disease. Claimant's Exhibit 2. On the contrary, Dr. Broudy diagnosed chronic obstructive airways disease resulting from cigarette smoking and found no evidence of coal workers' pneumoconiosis or any other pulmonary disease secondary to coal dust exposure based on an examination conducted on November 22, 2002. Director's Exhibit 16. After reviewing medical reports, including his own physical examination and tests of claimant, Dr. Rosenberg concluded that claimant does not have coal workers' pneumoconiosis or a coal mine dust related pulmonary condition. Employer's Exhibit 1.

The administrative law judge found the opinion of Dr. Rana, claimant's treating physician, entitled to little weight because Dr. Rana failed to indicate the duration of his treatment of claimant and to provide any examination findings or diagnostic test results that would serve as an underlying basis for his opinion that claimant had chronic obstructive lung disease. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 709, 22 BLR 2-537, 2-545-546 (6th Cir. 2002) (administrative law judge must examine merits and relative credibility of treating physicians' opinions when determining whether to give these opinions proper deference); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); Decision and Order at 11.

In addition, the administrative law judge permissibly determined that Dr. Rana's opinion was equivocal because Dr. Rana stated that the environmental conditions claimant endured in his coal mine employment were a "probable cause" of his lung disease. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director,* OWCP, 11 BLR 1-16, 1-19 (1987); Decision and Order at 11; Claimant's Exhibit 2.

Similarly, the administrative law judge found that while both Drs. Gaziano and Forehand relied on physical examination findings and objective test results, both physicians' diagnoses of coal workers' pneumoconiosis were worthy of less weight because each physician based his diagnosis, in part, on his own positive x-ray interpretation that was reread

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limitations pursuant to Section 725.414(a)(3)(i). Decision and Order at 6; Employer's Exhibit 3.

as negative for the existence of pneumoconiosis by a physician who possessed superior radiological expertise. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-648-649 (6th Cir. 2003); *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (*en banc*); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984).

In addition, the administrative law judge found that Dr. Gaziano's opinion was further undermined because it lacked any explanation with respect to the impact of claimant's cigarette smoking history on the etiology of the lung disease and determined that Dr. Forehand's opinion was undermined because it contained a faulty basis unsupported by medical literature and an inaccurate cigarette smoking history. *See Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); *see generally Shoup v. Director, OWCP*, 11 BLR 1-110, 1-112 (1987); Decision and Order at 12. Consequently, the administrative law judge properly found that the opinions of Drs. Gaziano and Forehand were entitled to diminished weight because their opinions were inadequately explained and, therefore, insufficiently reasoned with respect to the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge, within a permissible exercise of his discretion, found that the contrary opinions of Drs. Broudy and Rosenberg were more persuasive and, therefore, entitled to dispositive weight because both physicians, who possess superior demonstrated expertise in the specialty of pulmonary disease medicine, based their opinions that claimant did not have coal workers' pneumoconiosis on supportive, objective, diagnostic tests and each physician explained precisely how the diagnostic test results were demonstrative of the absence of a pulmonary condition attributable to the inhalation of coal mine dust exposure. Accordingly, the administrative law judge concluded that Drs. Broudy and Rosenberg rendered well documented and well reasoned opinions. This was rational. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *King*, 8 BLR at 1-262; *Lucostic*, 8 BLR at 1-46 (1985); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 1-147 n.2 (1984); Decision and Order at 12; Director's Exhibit 16; Employer's Exhibit 1.

Because the administrative law judge's determination that the opinions of Drs. Broudy and Rosenberg were sufficiently documented and reasoned is rational and supported by substantial evidence, we affirm his crediting of these physicians' opinions over the contrary opinions of Drs. Rana, Gaziano, and Forehand pursuant to Section 718.202(a)(4). *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103 (crediting of physician's report as reasoned is a credibility determination within purview of administrative law judge); *see also Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997). Accordingly, we affirm the administrative law

judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Based on the foregoing, therefore, we affirm the administrative law judge's determination that claimant failed to affirmatively establish the existence of pneumoconiosis pursuant to Section 718.202(a) as this finding is rational, contains no reversible error, and is supported by substantial evidence. Because claimant has failed to satisfy his burden to establish, by a preponderance of the evidence, the existence of pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge's determination that entitlement to benefits is precluded. *See* 20 C.F.R. §718.202(a); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*); *see 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).[5]

[5] Claimant's failure to affirmatively establish the existence of pneumoconiosis, a requisite element of entitlement, obviates the need to address the administrative law judge's determinations with respect to pneumoconiosis arising out of coal mine employment under Section 718.203 and total respiratory disability under Section 718.204(b)(2). *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge