BRB No. 05-0806 BLA

JAMES W. PARMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JACKSON & JACKSON COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	DATE ISSUED: 05/31/2006
	)	
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 – Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

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

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Jeffrey S. Goldberg (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 – Denial of Benefits (04-BLA-5703) of Administrative Law Judge Robert L. Hillyard on a claim for benefits 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 eleven 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, the causal connection between pneumoconiosis and claimant's coal mine employment, and total respiratory or pulmonary disability. Accordingly, benefits were denied.

On appeal, claimant asserts that the administrative law judge erred in finding that the evidence is insufficient to establish the existence of pneumoconiosis and total disability. Claimant also contends that the Department of Labor has failed to provide claimant with a complete, credible pulmonary evaluation. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has submitted a letter, asserting that he has satisfied his statutory duty to provide claimant with a complete credible pulmonary evaluation.[1]

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 consider claimant's challenges to the administrative law judge's findings regarding the existence of pneumoconiosis. Claimant asserts that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Claimant specifically contends that the administrative law judge improperly relied on the qualifications of the physicians who interpreted the x-rays as negative, and on the numerical superiority of the negative x-ray interpretations.

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[1] We affirm the administrative law judge's finding of eleven years of coal mine employment, and the administrative law judge's findings that the existence of pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), and that total disability is not established pursuant to 20 C.F.R. §718.204(b)(i), (ii) and (iii), as they are not challenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The record contains six interpretations of three chest x-rays. The May 19, 2003 film was interpreted by Dr. Dahhan, a B reader, and Dr. Poulos, a B reader and Board-certified radiologist, as negative for pneumoconiosis. Director's Exhibit 22; Employer's Exhibit 1. The March 13, 2003 film was read by Dr. West, who is a B reader and Board-certified radiologist, as negative for pneumoconiosis. Director's Exhibit 23. In addition, Dr. Simpao, who is neither a B reader nor a Board-certified radiologist, read this film as positive. Director's Exhibit 9. Dr. Barrett interpreted this film for quality only. Director's Exhibit 10. The November 2, 2002 film was interpreted by Dr. Poulos, who is a B reader and Board-certified radiologist, as negative for pneumoconiosis, Director's Exhibits 20, 32, and it was interpreted by Dr. Baker, a B reader, as positive for pneumoconiosis, Director's Exhibit 11.

The administrative law judge considered the number of positive and negative interpretations of each x-ray, as well as the qualifications of the physicians providing each interpretation. He determined that each x-ray was negative for pneumoconiosis, and therefore found the x-ray evidence, as a whole, insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Decision and Order at 8. Since the administrative law judge has rationally considered both the quality and the quantity of the x-ray evidence, we affirm the administrative law judge's finding that the x-ray evidence does not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).[2] *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).

With regard to 20 C.F.R. §718.202(a)(4), claimant argues that the administrative law judge erred in rejecting Dr. Baker's opinion. The administrative law judge considered the opinions of Dr. Baker, who diagnosed clinical and legal pneumoconiosis, Director's Exhibit 11, and Dr. Simpao, who diagnosed clinical pneumoconiosis, Director's Exhibit 9. He also considered the opinions of Dr. Dahhan, who found the objective evidence insufficient to diagnose coal workers' pneumoconiosis or any pulmonary impairment, Director's Exhibit 22, and Dr. Branscomb, who stated that claimant does not suffer from legal or clinical pneumoconiosis, Employer's Exhibit 2.

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[2] 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. Therefore we reject claimant's suggestion.

The administrative law judge found that Dr. Baker provided no basis for his diagnosis of pneumoconiosis, other than an x-ray and claimant's exposure history and, relying on *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000), the administrative law judge found that this opinion was therefore not well documented or well reasoned. The administrative law judge determined that Dr. Baker's diagnoses of chronic obstructive pulmonary disease and chronic bronchitis, both due to coal mine employment, were not adequately documented or explained. The administrative law judge also found Dr. Simpao's diagnosis of pneumoconiosis entitled to less weight. The administrative law judge further found Dr. Dahhan's opinion, that claimant does not suffer from pneumoconiosis, to be well reasoned, and supported by the well reasoned report of Dr. Branscomb. The administrative law judge therefore determined that the weight of the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).[3] Decision and Order at 10-11.

We reject claimant's contentions regarding Dr. Baker's opinion. The administrative law judge properly found that Dr. Baker's opinion regarding the existence of pneumoconiosis is inadequately explained. *See Cornett*, 227 F.3d 569, 22 BLR 2-107; *Riley v. National Mines Corp.*, 852 F.2d 197, 11 BLR 2-182 (6th Cir. 1988). Further, we hold that the administrative law judge permissibly found that the opinions of Drs. Dahhan and Branscomb are well documented and reasoned opinions regarding the existence of pneumoconiosis. *Napier v. Director, OWCP*, 999 F.2d 1032, 17 BLR 2-186 (6th Cir. 1993). Therefore, 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)(4).

In addition, because claimant fails to provide any support for his assertion that the administrative law judge substituted his opinion for that of a medical expert at Section 718.202(a)(4), and since a review of the administrative law judge's Decision and Order reveals no instance where the administrative law judge substituted his opinion for that of a medical expert, we reject claimant's assertion that the administrative law judge substituted his opinion for that of a physician.

Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). In view of our affirmance of the administrative law judge's finding that

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[3] Claimant does not challenge the administrative law judge's finding that Dr. Simpao's opinion is entitled to less weight, Decision and Order at 11. Therefore we affirm this finding. *See Skrack*, 6 BLR 1-710.

claimant has not established the existence of pneumoconiosis, an essential element of entitlement pursuant to Part 718, *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we further affirm the administrative law judge's denial of benefits. Thus, we need not address claimant's arguments regarding the other elements of entitlement.

We do, however, consider claimant's allegation that the Director failed to provide him with a complete, credible pulmonary evaluation. The Director responds, contending that Dr. Simpao's report satisfies his statutory obligation. The Director notes that the administrative law judge did not reject Dr. Simpao's diagnosis of pneumoconiosis, but rather accorded Dr. Simpao's diagnosis "less weight." The Director urges that he has therefore satisfied his burden.

The Director is statutorily mandated to provide claimant with an opportunity for a complete pulmonary evaluation in order to substantiate his claim. *See* 30 U.S.C. §923(b) ("Each miner who files a claim for benefits. . . . shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation."); *see also Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). The regulations provide that a complete pulmonary evaluation "includes a report of physical examination, a pulmonary function study, a chest roentgenogram and, unless medically contraindicated, a blood gas study." 20 C.F.R. §725.406(a).

We agree with the position of the Director, whose duty it is to ensure the proper enforcement and lawful administration of the Act, *Hodges*, 18 BLR at 1-89-90, that he has fulfilled his statutory obligation in this case. Claimant selected Dr. Simpao to perform his Department-sponsored pulmonary evaluation. As the Director accurately notes, Dr. Simpao conducted a physical examination, took an x-ray and obtained pulmonary function and arterial blood gas study results, and he completed a report, addressing all of the relevant issues of entitlement. *See* Director's Exhibit 9. Because Dr. Simpao performed a complete pulmonary evaluation, we hold that the Director satisfied his obligation under the Act. Moreover, 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). Although the administrative law judge accorded Dr. Simpao's opinion less weight at Section 718.202(a)(4), he did not find this opinion devoid of probative value. Therefore, we hold that Dr. Simpao's opinion satisfies the Director's obligation under Section 413(b) of the Act, and we reject claimant's contrary argument.

Accordingly, the administrative law judge's Decision and Order – Denial of 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