BRB No. 04-0144 BLA

TILLMAN BROCK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NALLY & HAMILTON ENTERPRISES	)	DATE ISSUED: 09/30/2004
	)	
and	)	
	)	
AMERICAN INTERNATIONAL COMPANY	)	
	)	
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 of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

Sherri P. Brown (Ferreri & Fogle), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (02-BLA-5280) of Administrative Law Judge Thomas F. Phalen, Jr. 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). The administrative law judge credited claimant with twenty-five and three-fourths 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(a)(1)-(4). He also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[1]

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 & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, claimant contends 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). Specifically, claimant asserts that the administrative law judge improperly relied on the qualifications of the physicians submitting the negative x-ray interpretations, and the numerical superiority of the negative x-ray interpretations. The record consists of two x-rays, dated July 11, 2001 and July 18, 2001. Dr. Baker read the July 11, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 12, while Dr. Barrett read the same x-ray as negative for pneumoconiosis, Employer's Exhibit 1. Dr. Hussain read the July 18, 2001 x-ray as positive for pneumoconiosis, Director's Exhibit 10, while Drs. Spitz and Wiot read the same x-ray as negative for pneumoconiosis, Employer's Exhibits 2, 3.

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge must consider the quantity of the evidence in light of the difference in qualifications of the readers. *Stanton 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). Here, in addition to considering the numerical superiority of the negative x-ray readings, the administrative law judge also

[1]Since the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

considered the qualifications of the various physicians. Decision and Order at 11. The administrative law judge properly accorded greater weight to the negative x-ray readings that were provided by physicians who are dually qualified as B readers and Board-certified radiologists. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge stated, "I accord greater probative weight to the interpretation of Dr. Barrett based on his credentials." Decision and Order at 11. The administrative law judge also stated, I accord greater weight to the interpretations of Drs. Spitz and Wiot based on their credentials." *Id*. Drs. Barrett, Spitz and Wiot are dually qualified as B readers and Board-certified radiologists. Neither Dr. Baker nor Dr. Hussain is a B reader or a Board-certified radiologist. Thus, we reject claimant's assertion that the administrative law judge improperly relied on the qualifications of the physicians submitting the negative x-ray interpretations, and the numerical superiority of the negative x-ray interpretations.[2] *Stanton*, 65 F.3d at 59, 19 BLR at 2-280; *Woodward*, 991 F.2d at 321, 17 BLR 2-87. Moreover, since it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).

Next, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Specifically, claimant asserts that the administrative law judge erred in substituting his opinion for those of Drs. Baker and Hussain. We disagree. Drs. Baker and Hussain opined that claimant suffers from pneumoconiosis, Director's Exhibits 10, 12, while Dr. Burki opined that claimant does not suffer from pneumoconiosis, Employer's Exhibit 4. The administrative law judge permissibly discredited the opinions of Drs. Baker and Hussain because they are not reasoned, noting that their diagnoses of pneumoconiosis are based only on x-ray readings and histories of coal dust exposure. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); Decision and Order at 12. Thus, we reject claimant's assertion that the administrative law judge erred in substituting his opinion for those of Drs. Baker and Hussain. Further, since the administrative law judge properly discredited the opinions of Drs. Baker and Hussain, the only opinions of record that could support a finding of the existence of pneumoconiosis, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

[2]Claimant generally asserts that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for his assertion, however, and the Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 11. Thus, we reject claimant's assertion that the administrative law judge may have selectively analyzed the x-ray evidence.

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718.[3] *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

[3]In view of our disposition of the case at 20 C.F.R. §718.202(a), we decline to address claimant's contentions at 20 C.F.R. §718.204(b)(2)(iv). *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).