

BRB Nos. 04-0167 BLA
and 04-0167 BLA-A

ORAL ROBERTS)
)
 Claimant-Petitioner)
 Cross-Respondent)
)
 v.)
)
 SHAMROCK COAL COMPANY,)
 INCORPORATED)
)
 and)
)
 SUN COAL COMPANY, INCORPORATED) DATE ISSUED: 09/30/2004
)
 Employer/Carrier-)
 Respondents)
 Cross-Petitioners)
)
 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 Alice M. Craft,
Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for
employer.

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

PER CURIAM:

Claimant¹ appeals, and employer cross-appeals, the Decision and Order Denying Benefits (03-BLA-5284) of Administrative Law Judge Alice M. Craft in a miner's 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 the miner with ten years of coal mine employment. Decision and Order at 3. Applying the regulations pursuant to 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) and total respiratory disability pursuant to 20 C.F.R. §718.204(b). *Id.* at 10-11. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to find the existence of pneumoconiosis established pursuant to Section 718.202(a)(1) and Section 718.202(a)(4). Claimant's Brief at 3-5. Additionally, claimant contends that the administrative law judge erred in failing to find that claimant has established total respiratory disability based on the medical opinion evidence. *Id.* at 6-8. Employer cross-appeals, urging affirmance of the administrative law judge's denial of benefits. Employer's Brief in Support of Cross-Petition for Review at 11-18. Additionally, employer contends that the administrative law judge erred in determining that claimant has ten years of qualifying coal mine employment. *Id.* at 19-22. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.²

Pursuant to Section 718.202(a)(1), the administrative law judge stated that the record contains six readings of four x-rays, of which two interpretations were positive. Decision and Order at 9. The administrative law judge noted that both of the positive readings were rendered by physicians who are neither B readers³ nor Board-certified

¹Claimant is Oral Roberts, the miner, who filed his claim for benefits on February 12, 2001. Director's Exhibit 2.

²We affirm the administrative law judge's findings that claimant failed to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(a)(3) and total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(b)(2)(iii) because these findings are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

radiologists. *Id.* at 10. Relying on the negative readings by the physicians with superior qualifications, the administrative law judge permissibly found the March 3, 2001 and the May 4, 2001 x-rays to be negative for the existence of pneumoconiosis. *Id.* The administrative law judge deemed the December 3, 2001 and the March 12, 2003 x-rays to be negative because the record contains only negative interpretations of these x-rays. *Id.* Therefore, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis by the x-ray evidence. *Id.*

Claimant contends that the administrative law judge erred in considering the qualifications of the physicians in weighing the x-ray evidence, in placing substantial weight on the numerical superiority of the x-ray readings, and in selectively analyzing the x-ray evidence. Claimant's Brief at 3-4. Contrary to claimant's assertion, it was permissible for the administrative law judge to consider the radiological qualifications of the x-ray readers. *See Johnson v. Island Creek Coal Co.*, 846 F.2d 364, 11 BLR 2-161 (6th Cir. 1988); *Creech v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Similarly, because the administrative law judge also considered the x-ray readers' qualifications, she did not rely solely on the numerical superiority of the negative readings in rendering her finding. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995). Additionally, claimant's bald assertion that the administrative law judge selectively analyzed the x-ray evidence is without merit, inasmuch as the administrative law judge considered all the x-ray evidence in the record. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589, 1-591 (1984); *see generally Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Therefore, we reject claimant's contentions and affirm the administrative law judge's Section 718.202(a)(1) finding.

Claimant contends that the administrative law judge erred in rejecting the medical opinions of Drs. Baker and Hussain. Pursuant to Section 718.202(a)(4), the administrative law judge considered the opinions of Drs. Baker, Hussain, Broudy, and Rosenberg. Decision and Order at 11. Drs. Baker and Hussain found the existence of pneumoconiosis, whereas Drs. Broudy and Rosenberg did not. Director's Exhibits 7, 9, 18; Employer's Exhibits 5, 91. The administrative law judge did "not discredit any of the medical opinions of record." Decision and Order at 11. Rather, the administrative law judge stated that she would "resolve the conflict of opinions by according greater probative weight to the opinions of Drs. Broudy and Rosenberg." *Id.* With regard to the opinions of Drs. Broudy and Rosenberg, the administrative law judge found "their reasoning and explanation in support of their conclusions more complete and thorough than that provided by [Drs. Baker and Hussain]." *Id.* The administrative law judge further found that "Drs. Broudy and Rosenberg better explained how all of the evidence they developed and reviewed supported their conclusions" and stated that these

physicians' opinions are "in better accord both with the evidence underlying their opinions and the overall weight of the medical evidence of record." *Id.* The administrative law judge noted that Drs. Baker and Hussain found pneumoconiosis only based on claimant's history of coal dust exposure and positive x-ray readings⁴ and that claimant's 2001 outpatient treatment records do not mention pneumoconiosis, chronic obstructive pulmonary disease, or any lung disease. *Id.* Based on the foregoing, the administrative law judge, within her discretion as trier-of-fact, found that the opinions of Drs. Broudy and Rosenberg are entitled to greater weight. *Id.*; *Maddaleni v. Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). Therefore, we reject claimant's assertions⁵ and affirm the administrative law judge's Section 718.202(a)(4) finding that claimant failed to establish the existence of pneumoconiosis based on the medical opinion evidence.

Because we affirm the administrative law judge's determination that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a requisite element of entitlement under Part 718, we further affirm the administrative law judge's denial of benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Accordingly, it is unnecessary for us to address claimant's contentions concerning total disability and employer's challenge, on cross-appeal, to the administrative law judge's finding of ten years of qualifying coal mine employment. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

⁴Dr. Hussain stated in his report that he based his diagnosis of pneumoconiosis on the "x-ray findings [and] history." Director's Exhibit 7. Dr. Baker found coal workers' pneumoconiosis "based on abnormal x-ray and significant history of dust exposure." Director's Exhibit 9.

⁵Additionally, claimant asserts that the administrative law judge erred in interpreting medical tests and in substituting her conclusions for those of the physicians. Claimant's Brief at 5. However, claimant has not provided any support for that assertion, nor does a review of the evidence and the administrative law judge's Decision and Order reveal that the administrative law judge interpreted medical tests or substituted her conclusions for those of the physicians of record. *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge