BRB No. 04-0384 BLA

TERRY BROWN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOUNTAIN CLAY, INCORPORATED	)	DATE ISSUED: 09/29/2004
	)	
and	)	
	)	
JAMES RIVER COAL COMPANY c/o ACORDIA EMPLOYERS SERVICES CORPORATION	)	
	)	
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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Lois A. Kitts and James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2003-BLA-5241) of Administrative Law Judge Daniel J. Roketenetz 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 at least twenty-

four years of qualifying coal mine employment as stipulated by the parties and supported by the record, and adjudicated this claim, filed on February 12, 2001, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total respiratory disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1), (4), and total disability at Section 718.204(b)(2)(iv).[1] 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.[2]

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no

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[1]Claimant's reference to "Section 718.204(c)(4)" is misplaced. The regulation regarding establishing total disability by a reasoned medical opinion is now contained in 20 C.F.R. §718.204(b)(2)(iv).

[2]We affirm, as unchallenged, 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)(2)-(3) and total respiratory disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

reversible error.[3] In his consideration of the x-ray evidence, the administrative law judge rationally found that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1) because the preponderance of interpretations by physicians with superior qualifications was negative. Decision and Order at 6-7; *see Staton v. Norfolk & Western Railway 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). He permissibly assigned diminished weight to the positive interpretations by Dr. Baker of an April 4, 2001 film and by Dr. Hussain of a June 29, 2001 film, as these physicians possessed no special radiological qualifications and both films were reread as negative for pneumoconiosis by Dr. Wiot, a Board-certified radiologist, B reader and Professor of Radiology. *Id.*; Director's Exhibits 9, 11, 31; Employer's Exhibits 2, 11. The administrative law judge also properly accorded greater weight to the uncontradicted negative interpretations by Dr. Broudy, a B reader, of a film dated July 30, 2001, and by Dr. Dahhan, a B reader, of the most recent film dated September 10, 2003. Decision and Order at 6-7; Employer's Exhibits 4, 6; *see Woodward*, 991 F.2d 314, 17 BLR 2-77. The administrative law judge's determinations are supported by the record, and we find no evidence to support claimant's suggestion that the administrative law judge selectively analyzed the x-ray evidence of record.

At Section 718.202(a)(4), the administrative law judge accurately reviewed the relevant medical opinions and acted within his discretion in finding that the preponderance of well-reasoned opinions failed to establish the existence of pneumoconiosis. Decision and Order at 8-13. Although claimant asserts that the reports of Drs. Baker and Hussain are well-reasoned and sufficient to satisfy claimant's burden, the administrative law judge permissibly discounted the opinions as the physicians explicitly indicated that they based their diagnoses of pneumoconiosis upon claimant's history of coal dust exposure and their own positive x-ray interpretations, which the administrative law judge determined were reread as negative by better-qualified physicians, and Drs. Baker and Hussain offered no other explanation for their conclusions.[4] Decision and Order at 11-13; Director's Exhibits 9, 11; *see Cornett v. Benham*

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[3]This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in the Commonwealth of Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 3, 5.

[4]The administrative law judge additionally determined that Dr. Hussain's opinion was poorly reasoned because the physician did not record the duration and extent of the claimant's coal mine employment. Decision and Order at 12. The record reflects, however, that although claimant's coal mine employment history is not listed in Dr. Hussain's report, a copy of this history is attached to it. Director's Exhibit 9. The administrative law judge's error in this regard is harmless, however, as he provided an alternative valid reason for

Coal, Inc., 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). We further find no merit in claimant's contention that the administrative law judge substituted his opinion for those of Drs. Baker and Hussain, as the Decision and Order clearly indicates that the administrative law judge properly credited the contrary opinions of Drs. Broudy and Dahhan as better reasoned and supported by the objective evidence of record. Decision and Order at 12; Director's Exhibit 33; Employer's Exhibits 6, 12.; *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when they are supported by substantial evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). The administrative law judge's finding that the evidence of record is insufficient to establish that claimant suffers from pneumoconiosis is supported by substantial evidence and is affirmed. Claimant's failure to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4), an essential element of entitlement, precludes an award of benefits under 20 C.F.R. Part 718, thus, we need not address claimant's other arguments on appeal regarding the administrative law judge's findings at Section 718.204. *Anderson,* 12 BLR 1-111; *Trent*, 11 BLR 1-26. Consequently, we affirm the administrative law judge's denial of benefits.

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

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discounting Dr. Hussain's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge