

BRB No. 07-0114 BLA

K.B.)
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 Claimant-Petitioner)
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 v.)
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 JARISA PROCESSING INCORPORATED) DATE ISSUED: 09/24/2007
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 and)
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 EMPLOYERS INSURANCE OF WAUSAU)
)
 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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Mark L. Ford, Harlan, Kentucky, for claimant.

H. Ashby Dickerson (Penn Stuart), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (04-BLA-5501) of Administrative Law Judge Pamela Lakes Wood rendered 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). Claimant filed his application for benefits on May 9, 2002. Director's Exhibit 2. The district director issued a Proposed Decision and Order awarding benefits on November 4, 2003. Director's Exhibit 34. At employer's request, the case was forwarded to the Office of Administrative Law Judges for a formal

hearing, which was held on June 9, 2005. Director's Exhibit 36. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding that claimant failed to establish the existence of clinical pneumoconiosis under 20 C.F.R. §718.202(a)(1) and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer responds, urging affirmance.¹ The Director, Office of Workers' Compensation Programs, has declined to file a brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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, 363 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that he is totally disabled due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4, 1-5 (1986) (*en banc*). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*).

In this case, the administrative law judge denied benefits because he found that claimant failed to establish the existence of pneumoconiosis. On appeal, claimant argues that the administrative law judge erred in finding that the x-ray evidence was equally probative. Claimant maintains that the Board should impose limits on the routine practice of the Office of Administrative Law Judges in finding the evidence to be "in equipoise." Claimant's Brief at 3. Claimant's assertion of error is without merit, based on the facts of this case.

Under Section 718.202(a)(1), the administrative law judge considered seven readings of three x-rays dated October 9, 2002, March 10, 2003 and January 7, 2004.²

¹ The administrative law judge found that the evidence was insufficient to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3). These findings are affirmed as unchallenged by the parties on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² In addition, Dr. Barrett interpreted the October 9, 2002 x-ray for quality purposes only. Director's Exhibit 12.

Director's Exhibits 11, 30, 33; Claimant's Exhibit 1; Employer's Exhibit 19. As noted by the administrative law judge, the October 9, 2002 x-ray was read as positive by Dr. Hussain, and as positive by Dr. Alexander, a Board-certified radiologist and B reader. Dr. Wheeler, a Board-certified radiologist and B reader, read the October 9, 2002 x-ray as negative for pneumoconiosis. Decision and Order at 19. The March 10, 2003 x-ray was read as positive for pneumoconiosis by Dr. Alexander and as negative for pneumoconiosis by Dr. Poulus, a Board-certified radiologist and B reader. *Id.* Similarly, the January 7, 2004 x-ray had one positive reading by Dr. Alexander and one negative reading by Dr. Wheeler. *Id.*

In weighing the conflicting x-ray readings, the administrative law judge performed a qualitative and quantitative analysis of the evidence, taking into account the qualifications of the readers, *Staton v. Norfolk & Western Ry. 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), and permissibly found that the positive and negative readings by the dually qualified physicians were in equipoise as to the presence or absence of pneumoconiosis. Decision and Order at Order at 19. The administrative law judge permissibly assigned little weight to Dr. Hussain's positive reading of the October 9, 2002 x-ray because he holds no radiological qualifications. Since the administrative law judge determined that the x-ray evidence was in equipoise, she correctly found that claimant failed to carry his burden of proof. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994). Because substantial evidence supports the administrative law judge's finding that the x-ray evidence fails to establish the existence of pneumoconiosis, her finding at Section 718.202(a)(1) is affirmed.³

Claimant also contends that the administrative law judge erred in weighing the medical opinion evidence as to the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). Claimant specifically asserts that while the administrative law judge concluded that Dr. Hussain offered "substantially more reasoning and documentary support for his diagnosis of pneumoconiosis," she erred in rejecting his opinion that claimant suffered from legal pneumoconiosis based on her findings at Section 718.202(a)(1). Claimant's Brief at 5, citing Decision and Order at 20. Claimant's argument is without merit. Initially, we note that the administrative law judge did not find Dr. Hussain's opinion to be "substantially more reasoned" than employer's experts. Decision and Order at 20. Rather, the administrative law judge only found that Dr. Hussain's opinion was substantially more reasoned than the opinions of Drs. Alam and

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 202 (1989) (*en banc*); Director's Exhibits 3, 5.

Bielecki, who failed to cite to any clinical data to support their diagnoses of pneumoconiosis.⁴ *Id.*

Furthermore, contrary to claimant's contention, the administrative law judge did not reject Dr. Hussain's diagnosis of legal pneumoconiosis based on her review of the x-ray evidence. Rather, the administrative law judge specifically considered Dr. Hussain's deposition testimony and found that his diagnosis, that claimant suffered from an obstructive respiratory condition due in part to coal dust exposure, if credited, was sufficient to satisfy the definition of pneumoconiosis set forth at 20 C.F.R. §718.201(a)(2). In contrast, the administrative law judge noted that Drs. Castle and Rosenberg specifically stated that claimant's respiratory impairment was not due to coal dust exposure. In weighing these conflicting opinions, the administrative law judge permissibly accorded controlling weight to the opinions of Drs. Castle and Rosenberg because she found that they "reviewed far more documentation and medical records in reaching their conclusions" and since she found that their opinions "are more extensively documented, and their explanations are more detailed" in comparison to Dr. Hussain. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-623 (6th Cir. 2003); *Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 22 BLR 2-495 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); Decision and Order at 21.

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark*, 12 BLR at 1-149; *Anderson*, 12 BLR at 1-111. Consequently, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) as it is supported by substantial evidence. Because claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement, benefits are precluded. *See Trent*, 11 BLR at 1-26; *Perry*, 9 BLR at 1-1. We therefore affirm the administrative law judge's decision to deny benefits in this claim.

⁴ The administrative law judge acknowledged that Drs. Alam and Bielecki were treating physicians, but she found that neither doctor explained the basis for his diagnosis of pneumoconiosis. The administrative law judge therefore concluded that their opinions were inadequately documented and reasoned to satisfy claimant's burden of establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 20. Because claimant does not challenge the weight the administrative law judge accorded the opinions of Drs. Alam and Bielecki on appeal, her findings are affirmed. *See Skrack*, 6 BLR at 1-711.

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

BETTY JEAN HALL
Administrative Appeals Judge