

BRB No. 04-0683 BLA

JIMMY C. THOMPSON)
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 Claimant-Petitioner)
)
 v.)
)
 ROBERT COAL COMPANY)
)
 and)
)
 OLD REPUBLIC INSURANCE COMPANY) DATE ISSUED: 02/28/2005
)
 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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Billy J. Moseley (Webster Law Offices), Pikeville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (03-BLA-6343) of Administrative Law Judge Rudolf L. Jansen on a subsequent claim filed on November 21, 2001 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). Decision and Order-

Denying Benefits at 3; Director's Exhibit 3. The administrative law judge found that claimant's previous claim for benefits was denied on June 13, 1994 by the Office of Workers' Compensation Programs because the evidence failed to establish the existence of pneumoconiosis or total disability. Decision and Order-Denying Benefits at 10; Director's Exhibit 1. After crediting claimant with 10.83 years of coal mine employment,¹ the administrative law judge found that the new evidence established a totally disabling respiratory impairment pursuant to 20 C.F.R. 718.204(b)(2), and thus, a change in an applicable condition of entitlement as required by 20 C.F.R. §725.309(d). Decision and Order-Denying Benefits at 16; *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). Considering the merits of the claim, however, the administrative law judge found that the evidence of record failed 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 contends that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). In response, employer argues that the administrative law judge's denial of benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not submit a response brief on the merits of this appeal.²

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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must prove by a preponderance of the evidence that he suffers from pneumoconiosis, that

¹ The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

² The administrative law judge's findings that claimant has 10.83 years of coal mine employment, thirty-nine years of smoking history, and his findings pursuant to 20 C.F.R. §§718.202(a)(2)-(a)(3) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. 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).

Under Section 718.202(a)(1), claimant contends that the administrative law judge “misapplied the regulations” because he did not “assign higher weight to interpretations of physicians who qualified as either Board certified Radiologists or ‘B’ Reader[s],” such as B reader Dr. Paranthaman. Claimant’s Brief at 6. Claimant alleges that the administrative law judge ignored Dr. Paranthaman’s positive reading that claimant suffers from pneumoconiosis.

In considering the newly submitted x-ray evidence, the administrative law judge properly accorded greatest weight to the x-ray readings by those physicians who were dually qualified as both Board-certified radiologists and B readers, all of which were negative for the existence of pneumoconiosis.³ Decision and Order at 10-11; *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-6, 1-7 (1999)(*en banc*); see *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983). The administrative law judge found that the new x-ray evidence of record consisted of five interpretations of three chest x-rays, three of which were negative for pneumoconiosis, two by dually qualified physicians, Drs. Wiot and Spitz. Decision and Order-Denying Benefits at 11, 16; Employer’s Exhibits 2, 4. The administrative law judge properly found that the positive x-ray readings of Drs. Paranthaman and Baker were outweighed by the negative readings of the same x-ray by Drs. Wiot and Spitz, each of whom possesses greater qualifications than Drs. Paranthaman and Baker. Decision and Order at 15; 20 C.F.R. §718.202(a)(1); *Staton*, 65 F.3d at 59, 19 BLR at 281; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; *Cranor*, 22 BLR at 1-6, 1-7. Consequently, we reject claimant’s argument that the administrative law judge improperly failed to accord greater weight to Dr. Paranthaman’s positive reading based on his status as a B-reader. We affirm as unchallenged the administrative law judge’s finding that the prior x-ray evidence contains two negative interpretations of a January 13, 1994 x-ray. See *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order-Denying Benefits at 16; Director’s Exhibit 1. Because the

³ Drs. Wiot and Spitz are Board-certified radiologists as well as B readers, Dr. Baker has neither qualification, and Dr. Paranthaman is a B reader. Director’s Exhibit 10, Claimant’s Exhibit 1; Employer’s Exhibits 2, 4.

administrative law judge properly weighed all of the x-ray evidence and considered both the quantity of the readings and the qualifications of the x-ray readers, we affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1). *Staton*, 65 F.3d at 59, 19 BLR 2-279, 2-281 (6th Cir. 1995); *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; *Cranor*, 22 BLR 1-1, 1-6, 1-7; *Kozele*, 6 BLR at 1-382-83 n.4.

Under Section 718.202(a)(4), claimant contends that the reasoned opinions of Drs. Baker and Paranthaman are sufficient to establish that he suffers from pneumoconiosis and are “not only based upon their x-ray reports, but also their pulmonary function studies, arterial blood gas studies, as well as personal physical examinations....” Claimant’s Brief at 7.

The administrative law judge acknowledged that both Drs. Baker and Paranthaman examined claimant and that their opinions recorded claimant’s occupational history, the results of claimant’s physical examination, x-ray, pulmonary function and blood gas studies. Decision and Order-Denying Benefits at 9. However, the administrative law judge permissibly gave less weight to the opinion of Dr. Baker that claimant had coal workers’ pneumoconiosis, finding it poorly documented and reasoned because Dr. Baker gave no explanation for his diagnosis of coal workers’ pneumoconiosis other than a history of coal dust exposure and his own positive x-ray reading. See *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); Decision and Order-Denying Benefits at 11-12; Director’s Exhibit 10; Claimant’s Exhibit 1; Employer’s Exhibit 6. Further, the administrative law judge reasonably found “conclusory” the opinion of Dr. Baker that coal dust exposure and cigarette smoking caused claimant’s chronic obstructive pulmonary disease and chronic bronchitis, because Dr. Baker did not explain the basis of his conclusion. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); Decision and Order Denying Benefits at 12; Director’s Exhibit 10. Substantial evidence supports the administrative law judge’s finding. Dr. Baker merely stated, “COPD with mild obstructive defect: PFTS” and “Chronic bronchitis: history of cough, sputum production and wheezing” due to “coal dust exposure/cigarette smoking.” Director’s Exhibit 10.

The administrative law judge also permissibly assigned less weight to the opinion of Dr. Paranthaman that claimant’s obstructive pulmonary disease and chronic bronchitis were caused by cigarette smoking as well as by coal dust exposure because he based his diagnosis, in part, on the results of a pulmonary function study deemed invalid by Dr. Branscomb for lack of optimal effort. See *Clark*, 12 BLR at 1-155; *MacMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order-Denying Benefits at 12. Dr. Branscomb explained that claimant’s best effort is substantially better than the second and third effort, that the second and third best efforts both show breath holding, and that the irregularity to the contours, meaning variations in effort, and breath holding are evident

on the three post-bronchodilator tests also. Employer's Exhibit 3. The administrative law judge permissibly found Dr. Branscomb's evaluation of the pulmonary function study "persuasive." See *Clark*, 12 BLR at 1-155; *MacMath*, 12 BLR at 1-6; Decision and Order-Denying Benefits at 12.

Moreover, the administrative law judge reasonably found that the opinion of Dr. Branscomb that claimant does not have a coal dust induced lung disease was well reasoned and documented because it was supported by the x-ray evidence, reported examination findings, and the results of the pulmonary function studies. Decision and Order-Denying Benefits at 12; *Clark*, 12 BLR at 1-155; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985). Consequently, substantial evidence supports the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) because the "better-reasoned" opinion of Dr. Branscomb, supported by the opinion of Dr. Broudy, outweighed the opinions of Drs. Baker and Paranthaman. *Id.*

Claimant also contends that his credible hearing testimony that he could not breathe properly is further evidence that he suffers from pneumoconiosis. We disagree. In a living miner's case, lay testimony is generally insufficient to establish the existence of pneumoconiosis, unless is corroborated by at least "a quantum of medical evidence." *Madden v. Gopher Mining Co.*, 21 BLR 1-122, 1-125 (1999). Because we have affirmed the administrative law judge's finding that the medical evidence in this living miner's case does not establish the existence of pneumoconiosis, the testimony provided by claimant could not serve as the basis of a determination of the existence of pneumoconiosis. See 20 C.F.R. §718.202(c).

Because we affirm the administrative law judge's finding that the existence of pneumoconiosis has not been established, an essential element of entitlement, we need not address employer's arguments regarding the administrative law judge's findings on the issue of total disability. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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