BRB No. 98-0307 BLA

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| ROY WATKINS, JR. | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| MASTER BLEND COALS & ENERGY INCORPORATED | ) | DATE ISSUED: |
| | ) | |
| Employer-Respondent | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Roy Watkins, Jr., Wallins Creek, Kentucky, *pro se*.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-0901) of Administrative Law Judge Edward Terhune Miller 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).[1] The administrative law judge credited claimant with sixteen years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20

[1]The Board granted Hyde Trucking Company's Motion to Dismiss and Reform Caption since Hyde Trucking Company was not designated the responsible operator in this case. *Watkins v. Master Blend Coals and Energy Inc.*, BRB No. 98-0307 BLA (Order)(Apr. 7, 1998)(unpub.).

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).[2] Although the administrative law judge found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), the administrative law judge found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Neither employer nor the Director, Office of Workers' Compensation Programs, has participated in this appeal.[3]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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).

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[2]The administrative law judge stated that "[a]lthough Claimant has established more than ten years of coal mine employment and, thus, would be entitled to the presumption set forth at Section 718.203(b) that his pneumoconiosis, if established, arose out of coal mine employment, this issue is moot since Claimant has failed to establish the presence of pneumoconiosis." Decision and Order at 11.

[3]Inasmuch as the administrative law judge's length of coal mine employment finding and his finding that the evidence is sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), which are not adverse to this *pro se* claimant, are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), the administrative law judge considered all of the x-ray evidence of record. Of the thirty-two x-ray interpretations of record, twenty-one readings are negative for pneumoconiosis, Director's Exhibits 22, 23, 52-68, and eleven readings are positive, Director's Exhibits 24-26, 49, 50. The administrative law judge properly accorded greater weight to the negative x-ray readings provided by physicians who are B-readers and/or Board-certified radiologists.[4] *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Moreover, since twenty-one of the thirty-two x-ray interpretations of record are negative for pneumoconiosis, substantial evidence supports 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). *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994); *see also Director, OWCP v. Greenwich Collieries* [*Ondecko*], 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Further, we affirm 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) since the record does not contain any biopsy or autopsy evidence. Additionally, we affirm 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)(3) since none of the presumptions set forth therein is applicable to the instant claim. *See* 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is

[4]The administrative law judge stated that "the negative readings by the most highly qualified physicians lend strong support to each other." Decision and Order at 9. Whereas Dr. Lane, who is a B-reader, read x-rays dated October 20, 1993 and February 1, 1994 as positive for pneumoconiosis, Drs. Barrett and Sargent, who are B-readers and Board-certified radiologists, reread the same x-rays as negative. Further, whereas Drs. Brandon and Mathur, who are B-readers and Board-certified radiologists, read the May 12, 1995 x-ray as positive for pneumoconiosis, Drs. Barrett and Sargent, who are equally qualified, reread the same x-ray as negative. In addition, whereas Dr. Brandon as well as Dr. Baker, who is a B-reader, read the May 15, 1995 x-ray as positive for pneumoconiosis, Drs. Barrett and Sargent reread the same x-ray as negative. The administrative law judge found that the "[i]nterpretations of each x-ray are also, on balance, negative if greater weight is given to the interpretations by the doctors with the greater qualifications." *Id*.

inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption at 20 C.F.R. §718.305 because he filed his claim on November 18, 1994. *See* 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim; therefore, the presumption at 20 C.F.R. §718.306 is also inapplicable.

Next, in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge considered all of the relevant medical opinions of record. Whereas Drs. Bushey,[5] Clarke and Myers opined that claimant suffers from pneumoconiosis, Director's Exhibits 16-18, 49, 50, Drs. Branscomb and Dahhan opined that claimant does not suffer from pneumoconiosis, Director's Exhibit 52; Hyde Trucking Company Exhibit 1. Dr. Baker, in a report dated January 20, 1995, opined that claimant suffers from chronic obstructive pulmonary disease with severe obstructive defect related to intrinsic asthma with some aggravation by coal dust exposure. Director's Exhibit 19. In a subsequent report, Dr. Baker opined that claimant's respiratory impairment "is **probably** worsened to some extent by his coal dust exposure...[and that pneumoconiosis] **may** have aggravated [claimant's] underlying condition to where it would cause his symptoms to perhaps worsen at the time." Director's Exhibit 20 (emphasis added). Dr. Baker also opined that "[i]t is **unlikely** [that claimant] has pneumoconiosis." *Id*. (emphasis added). The administrative law judge properly accorded determinative weight to the opinions of Drs. Branscomb and Dahhan over the contrary opinions of Drs. Bushey, Clarke and Myers because of their superior qualifications.[6] *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v.*

[5]Dr. Bushey opined that claimant suffers from chronic lung disease with pulmonary fibrosis compatible with coal workers' pneumoconiosis. Director's Exhibits 17, 49.

[6]The administrative law judge stated that Dr. Dahhan is "a pulmonary specialist...who is [B]oard-certified in internal medicine and the subspecialty of pulmonary disease." Decision and Order at 7. Further, the administrative law judge stated that Dr. Branscomb is "a pulmonary specialist...who is [B]oard-certified in internal medicine." *Id*. at 8. Moreover, the administrative law judge observed that Dr. Branscomb "is shown in his resume to have a distinguished academic background in pulmonary medicine." *Id*. at 9 n.6. The record does not contain the credentials of Drs. Bushey, Clarke and Myers. However, the administrative law judge stated that he "takes judicial notice of the fact that [Dr. Myers is] listed in the AMA Directory of Physicians in the United States, 35th Edition (1996), and The *Official* ABMS Directory of Board Certified Medical Specialists, 27th Edition (1995),

*Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Further, the administrative law judge properly accorded greater weight to the opinions of Drs. Branscomb and Dahhan than to the contrary opinions of record because he found their opinions to be better reasoned and documented.[7] *See 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); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). In addition, the administrative law judge permissibly discounted the opinion of Dr. Baker because he found Dr. Baker's opinion to be equivocal.[8] *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Thus, substantial evidence supports 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)(4).

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

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as [B]oard-certified in internal medicine." Decision and Order at 6 n.4. Nonetheless, the administrative law judge observed that "Dr. Myers was [B]oard-certified in internal medicine but not pulmonary disease." *Id*. at 10. The administrative law judge also stated that "Dr. Clarke and Dr. Bushey are not listed as being [B]oard-certified in any medical specialty." *Id*. at 6 n.4.

[7]The administrative law judge stated that "Dr. Dahhan's more thorough and complete discussion of the medical evidence, including clinical findings, laboratory test results and chest x-ray films, outweighs the medical reports and conclusions of Drs. Clarke, Bushey and Myers." Decision and Order at 10. Further, the administrative law judge stated that "Dr. Branscomb explained in detail why the medical evidence of record is consistent with a diagnosis of asthma, and why this evidence is not consistent with a diagnosis of coal workers' pneumoconiosis." *Id*. at 10-11. Additionally, the administrative law judge stated that "Dr. Branscomb's specific and detailed discussion of the medical evidence is persuasive and lends strong support to Dr. Dahhan's finding that coal workers' pneumoconiosis is not present." *Id*. In contrast, the administrative law judge stated that the opinions of Drs. Bushey, Clarke and Myers were not "explicitly reasoned." *Id*. at 10.

[8]The administrative law judge stated that "Dr. Baker's opinion is somewhat equivocal, but it lends persuasive support to Dr. Dahhan's and Dr. Branscomb's conclusions." Decision and Order at 11. The administrative law judge observed that Dr. Baker's "opinion was too cautious to be conclusive." *Id*.

administrative law judge properly denied benefits under 20 C.F.R. Part 718.[9] *See 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.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

[9]In view of our disposition of this case at 20 C.F.R. §718.202(a), we need not address the administrative law judge's findings at 20 C.F.R. §§718.203 and 718.204(b). *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).