

BRB No. 97-0469 BLA

CECIL HARRIS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
CHANEY CREEK COAL CORPORATION)	
)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Party-in-Interest)	

Appeal of the Decision and Order on Remand of Clement J. Kichuk, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (94-BLA-0974) of Administrative Law Judge Clement J. Kichuk 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). This case is before the Board for the second time. Initially, Administrative Law Judge George P. Morin credited claimant with 6.35 years of coal mine employment, but concluded that the medical evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, he denied benefits. On appeal, the Board affirmed the administrative law judge's findings regarding the length of coal mine employment and pursuant to Section 718.202(a)(2), (3), but vacated the administrative law judge's findings pursuant to Section 718.202(a)(1), (4) because he misread a positive x-ray as negative and relied on that mischaracterization in weighing the

medical opinions. *Harris v. Chaney Creek Coal Corp.*, BRB No. 95-1259 BLA (Oct. 30, 1995)(unpub.). The Board therefore remanded the case for further consideration. On remand, the case was re-assigned to Judge Kichuk, who reweighed the x-rays and medical opinions and found that the existence of pneumoconiosis was not established. Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the x-rays did not establish the existence of pneumoconiosis. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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).

Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge erred in finding that the x-rays did not establish the existence of pneumoconiosis merely because the majority of the readings were negative. Claimant's Brief at 3-4. The record contains seven readings of four x-rays. Six readings were negative for pneumoconiosis and one was positive for the disease. Director's Exhibits 14, 30, 31, 32. Five of the negative readings were by physicians who are Board-certified radiologists, B-readers, or both, and the single positive reading was by a B-reader. Contrary to claimant's contention, the administrative law judge discussed all of the readings in light of the readers' radiological credentials and permissibly found that, while Dr. Baker, a B-reader, read the August 25, 1993 x-ray as 1/0, Director's Exhibit 30, the same film was read negative by a Board-certified radiologist and B-reader, Director's Exhibit 32, and all of the earlier and later films were read negative by Board-certified radiologists and B-readers. Decision and Order at 3-4; see *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). We therefore affirm as supported by substantial evidence the administrative law judge's finding pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge erred in discounting Dr. Baker's diagnosis of pneumoconiosis as inadequately reasoned. CB 3-4. The record contains three medical examination reports. Drs. Wicker and Dahhan reported normal chest examinations, negative x-rays, and normal objective studies. Director's Exhibits 12, 31. Based on these findings, both physicians concluded that pneumoconiosis was absent. *Id.* Dr. Baker reported clear lungs, normal blood gas studies, a mild obstructive defect on the pulmonary function study, and read an x-ray as 1/0. Director's Exhibit 30. Dr. Baker diagnosed "coal workers' pneumoconiosis category 1/0. . . based on abnormal x-ray and significant duration of exposure," chronic bronchitis by history, and a possible mild obstructive ventilatory defect.¹ *Id.* Since the administrative law

¹ Dr. Baker indicated that the results of the pulmonary function test were "not

judge had found only 6.35 years of coal mine employment established, he reasonably questioned Dr. Baker's reliance on twelve years of coal dust exposure as a basis for diagnosing pneumoconiosis, see *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985), and permissibly concluded that Dr. Baker's reasoning was not persuasively supported by the physical examination and test results. Decision and Order at 6; see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). By contrast, the administrative law judge found Dr. Dahhan's opinion to be "most persuasive" because it was better supported by the underlying objective examination and test results. Decision and Order at 6; see *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). An administrative law judge has broad discretion to determine whether a medical opinion is well-reasoned, see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989), and the Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable, see *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). Because the administrative law judge permissibly weighed the medical opinions, we affirm his finding pursuant to Section 718.202(a)(4).

Inasmuch as claimant raises no other specific legal or factual challenge to the administrative law judge's weighing of the medical evidence, see 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); see also *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), we affirm the denial of benefits.

reproducible." Director's Exhibit 30 at 3.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge