

BRB No. 04-0893 BLA

WALLACE D. COX)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BLEDSOE COAL CORPORATION)	DATE ISSUED: 04/27/2005
)	
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 - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

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

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

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (03-BLA-0292) of Administrative Law Judge Robert L. Hillyard 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

September 19, 2001. Director's Exhibit 2. The administrative law judge credited claimant with nineteen years of coal mine employment and found that claimant did not establish either the existence of pneumoconiosis or that he is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Claimant further asserts that the administrative law judge erred in his analysis of the medical opinion evidence when he found that claimant did not establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2). Both employer and the Director, Office of Workers' Compensation Programs (the Director), respond, urging affirmance of the administrative law judge's denial of benefits.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 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).

Pursuant to 20 C.F.R. §718.202(a)(1), claimant contends that the administrative law judge did not properly weigh the x-ray evidence pertaining to the existence of pneumoconiosis. Claimant's Brief at 3. We disagree. The administrative law judge had before him five readings of three x-rays. Of these readings, four were classified as negative for the existence of pneumoconiosis, Director's Exhibits 11, 13; Employer's Exhibits 2, 4, and the fifth reading was a physician's assessment of an x-ray's technical quality only. Director's Exhibit 12. The administrative law judge considered these x-ray readings in light of the readers' radiological qualifications and found that because all of the classified readings were negative for pneumoconiosis, claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Decision and Order at 8. Substantial evidence supports this finding, which is in accordance with law. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993). On this record, claimant's assertions that the administrative law judge improperly relied on the readers' credentials, placed undue weight on the numerical superiority of negative

readings, and “may have” selectively analyzed the readings, lack merit. Claimant’s Brief at 3. We therefore affirm the administrative law judge’s finding pursuant to 20 C.F.R. §718.202(a)(1).

Claimant raises no challenge to the administrative law judge’s determination that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 9-11. That finding is therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *see also Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). As the administrative law judge additionally found, the other methods of establishing the existence of pneumoconiosis provided at 20 C.F.R. §§718.202(a)(2), (a)(3) are inapplicable in this case.¹ We therefore affirm the administrative law judge’s finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a).

Because claimant failed to establish the existence of pneumoconiosis, a necessary element of entitlement in a miner’s claim under Part 718, we affirm the administrative law judge’s denial of benefits. *Anderson*, 12 BLR at 1-112; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

¹ These subsections are inapplicable because this is a living miner’s claim filed after January 1, 1982 in which the record contains no evidence of complicated pneumoconiosis. *See* 20 C.F.R. §718.202(a)(2), (a)(3).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge