BRB No. 97-1125 BLA

CHARLES DUNCAN, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED: _____
	)	
	)	DECISION AND ORDER
Party-in-Interest		

Appeal of the Decision and Order Denying Benefits of Edith Barnett, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-BLA-2606) of Administrative Law Judge Edith Barnett 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). The administrative law judge credited claimant with thirty years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the medical evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). In addition, she found the medical evidence insufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits, asserting that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Specifically, claimant contends that the administrative law judge failed to consider the broader definition of legal pneumoconiosis as set forth at 20 C.F.R. §718.201. In addition, claimant contends that the administrative law judge erred in her weighing of the blood gas study evidence of record pursuant to Section 718.204(c)(2). In response, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.[1]

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 applicable 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).

[1] The parties do not challenge the administrative law judge's decision to credit claimant with thirty years of coal mine employment or her findings pursuant to 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(c)(1), (c)(3)-(4). These findings are, therefore, affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In challenging the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge erred in failing to consider the broader definition of legal pneumoconiosis as set forth at Section 718.201. In particular, claimant contends that the administrative law judge considered only whether the x-ray evidence of record established the presence of clinical pneumoconiosis. This argument lacks merit. Contrary to claimant's contention, the administrative law judge considered the broader definition of legal pneumoconiosis in finding that the medical opinion evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).[2] Decision and Order at 8. In weighing the medical opinion evidence, the administrative law judge correctly determined that Drs. Castle, Jarboe and Morgan opined that claimant was not suffering from pneumoconiosis as well as finding that these opinions stated that any respiratory or pulmonary impairment from which claimant may be suffering was not related to his coal mine employment. Decision and Order at 8; Employer's Exhibits 2, 6, 7, 11, 12; 20 C.F.R. §718.201; *Nance v. Benefits Review Board*, 861 F.2d 68, 12 BLR 2-31 (4th Cir. 1988); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); *see also Handy v. Director, OWCP*, 16 BLR 1-73 (1990). The administrative law judge reasonably exercised her discretion in according greater weight to the opinions of Drs. Castle, Jarboe and Morgan over the contrary medical opinions of Drs. Forehand and Robinette, Director's Exhibits 10, 11; Employer's Exhibit 6, who opined that claimant was suffering from pneumoconiosis, based on their superior professional qualifications,[3] *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and that these opinions are more consistent with the other evidence of record. Decision and Order at 8; *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Pastva v. The Youghiogheny & Ohio Coal Co.*, 7 BLR 1-829 (1985).

[2] 30 U.S.C. §902(b) defines pneumoconiosis as a "chronic dust disease of the lungs and its sequelae, including respiratory and pulmonary impairments arising out of coal mine employment. The regulation at 20 C.F.R. §718.201 defines "arising out of coal mine employment" as including "any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment."

[3] The administrative law judge found that Dr. Forehand is Board-certified in Pediatrics and Allergy and Immunology, Dr. Robinette is Board-certified in Internal Medicine and Board-eligible in Pulmonary Disease, whereas Drs. Castle, Jarboe and Morgan are Board-certified in Internal Medicine and Pulmonary Disease. Decision and Order at 4-7; Director's Exhibit 10; Employer's Exhibits 2, 6, 7.

Finally, contrary to claimant's suggestion, the administrative law judge has complied with the Administrative Procedure Act in setting forth her underlying rationale in her weighing of the evidence. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Inasmuch as claimant does not otherwise challenge the administrative law judge's finding, we affirm her finding that the medical opinion evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). 20 C.F.R. §§718.201, 718.202(a)(4); *Perry, supra*.

Since claimant has not established the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, an award of benefits is precluded.[4] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry, supra*.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

[4] In light of our affirmance of the administrative law judge's findings that the medical evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement, *see* discussion *supra*, we decline to address claimant's argument that the administrative law judge erred in her consideration of the blood gas study evidence under Section 718.204(c)(2), as any error in those findings would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *see also Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge