BRB No. 98-0990 BLA

CARSON CLAY CHAPMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: _____
	)	
CARBON FUEL COMPANY	)	
	)	
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 - Denying Benefits and the Order Denying Motion for Consideration of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Carson Clay Chapman, Spencer, West Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits and the Order Denying Motion for Consideration (97-BLA-0003) of Administrative Law Judge Mollie W. Neal 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). In her decision, the administrative law judge credited claimant with sixteen and one-quarter years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 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). The administrative law judge also found the evidence insufficient to establish a totally disabling respiratory impairment due to pneumoconiosis.[1] 20 C.F.R. §718.204. Accordingly, the administrative law judge denied benefits. In a subsequent order, the administrative law judge denied claimant's request for reconsideration. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[2]

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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[1]The administrative law judge observed that "although the exercise values on the June 1995 blood gas study qualify under the regulatory guidelines, this qualifying study is not sufficient to establish total disability due to pneumoconiosis in light of the analysis of these results by the probative and persuasive medical opinion reports of record." Decision and Order at 16.

[2]Inasmuch as the administrative law judge's length of coal mine employment finding, which is not adverse to this *pro se* claimant, is not challenged on appeal, we affirm this finding. *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 the interpretations of the June 23, 1995 x-ray. Of the six x-ray interpretations of record, four readings were negative for pneumoconiosis, Director's Exhibits 22, 23; Employer's Exhibit 2, and two readings were positive, Director's Exhibits 11-13. The administrative law judge properly accorded greater weight to the negative x-ray readings which were provided by physicians who are dually qualified as B-readers and Board-certified radiologists.[3] *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Moreover, since four of the six x-ray interpretations of record are negative for pneumoconiosis, we hold that 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 Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *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 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 after January 1, 1982. *See* 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim; therefore, the

[3]Whereas Dr. Gaziano, who is a B-reader, and Dr. Patel, who is a Board-certified radiologist, read the June 23, 1995 x-ray as positive for pneumoconiosis, Drs. Kim, Scott and Wheeler, who are B-readers and Board-certified radiologists, read the same x-ray as negative. Dr. Fino, who is a B-reader, read the June 23, 1995 x-ray as negative.

presumption at 20 C.F.R. §718.306 is also inapplicable.

Finally, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Whereas Dr. Rasmussen opined that claimant suffers from coal workers' pneumoconiosis, Director's Exhibit 8; Claimant's Exhibit 1, Drs. Castle, Crisalli, Dahhan and Fino opined that claimant does not suffer from coal workers' pneumoconiosis, Director's Exhibit 25; Employer's Exhibits 1-7. The administrative law judge properly accorded greater weight to the opinion of Dr. Crisalli than to the contrary opinion of Dr. Rasmussen because of Dr. Crisalli's superior qualifications.[4] *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Further, the administrative law judge properly accorded greater weight to the opinion of Dr. Crisalli than to the contrary opinion of Dr. Rasmussen because she found Dr. Crisalli's opinion to be better supported by the underlying documentation of record.[5] *See Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983). In addition, the administrative law judge properly accorded greater weight to the opinion of Dr. Crisalli than to the contrary opinion of Dr. Rasmussen because she found Dr. Crisalli's opinion to be corroborated by the opinions of Drs. Castle, Dahhan and Fino.[6] *See Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984); *Newland v. Consolidation Coal Co.*, 6 BLR 1-1286

[4]The administrative law judge stated that "Dr. Crisalli is highly qualified as a pulmonary specialist." Decision and Order at 11. Dr. Crisalli is Board-certified in internal medicine and pulmonary diseases. Director's Exhibit 25. The record does not contain the credentials of Dr. Rasmussen.

[5]The administrative law judge observed that "Dr. Rasmussen based [his] diagnosis, in part, on positive chest x-ray readings which are outweighed by negative readings by dually qualified physicians." Decision and Order at 11. The administrative law judge also observed that "Dr. Rasmussen relied on results of qualifying laboratory tests which have been outweighed by more recent non-qualifying results." *Id*. In contrast, the administrative law judge observed that "Dr. Crisalli's examination report is supported by the most recent laboratory studies, [and] the persuasive chest x-ray readings of record." *Id*.

[6]The administrative law judge observed that "Dr. Crisalli's examination report is supported by...the review reports of the pulmonary specialists, Drs. Dahhan, Castle and Fino." Decision and Order at 11.

(1984). Therefore, we hold that 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 administrative law judge properly denied benefits under 20 C.F.R. Part 718.[7] *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 and Order Denying Motion for Consideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

[7]In view of our disposition of this case at 20 C.F.R. §718.202(a), we decline to address the administrative law judge's finding at 20 C.F.R. §718.204. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).