BRB No. 99-1276 BLA

JAMES P. DANIEL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
MAPLE MEADOW MINING 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 - Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

James P. Daniel, Beckley, West Virginia, *pro se*.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order - Denial of Benefits (98-BLA-0644) of Administrative Law Judge Richard T. Stansell-Gamm 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). After crediting claimant with twenty-four years of coal mine employment based upon the stipulation of the parties, the administrative law judge considered the instant claim, which was filed on April 22, 1997, pursuant to the applicable regulations at 20 C.F.R. Part 718. The administrative law judge determined that the evidence of record was insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the

administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In determining that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the administrative law judge correctly found that the June 20, 1997 x-ray was the only x-ray of the nine films of record that was interpreted as positive for pneumoconiosis.[i] Decision and Order at 8; Director's Exhibits 7, 10, 12. In discounting the two positive readings of this film, which were made by Dr. Gaziano, a B reader, and Dr. Patel, a B reader/Board-certified radiologist, because the film was re-read as negative for pneumoconiosis by nine physicians, seven of whom are dually-qualified B reader/Board-certified radiologists, the administrative law judge properly considered both the quantity of positive and negative interpretations as well as the qualifications of the physicians submitting them.[ii] *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Roberts v. Bethlehem Mining Corp.*, 8 BLR 1-211 (1985); Decision and Order at 8; Director's Exhibits 10-12, 22; Employer's Exhibits 1, 2, 4, 7, 9. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis by a preponderance of the x-ray evidence under Section 718.202(a)(1).

Additionally, the administrative law judge properly found that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2), as there is no autopsy or biopsy evidence in the record. Decision and Order at 4. The administrative law judge also properly found that claimant was precluded from establishing the existence of pneumoconiosis under Section 718.202(a)(3), as none of the presumptions thereunder applied.[iii] *Id*. We affirm, therefore, the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2), (a)(3).

In finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4), the administrative law judge discounted

Dr. Rasmussen's medical opinion, the only medical opinion of record indicating that claimant suffers from pneumoconiosis. Decision and Order at 14-15; Director's Exhibit 7. Dr. Rasmussen examined claimant on June 20, 1997, and diagnosed the presence of pneumoconiosis based in part upon a positive x-ray interpretation and claimant's coal mine employment history of approximately twenty-five years. Director's Exhibit 7. Although the administrative law judge found that Dr. Rasmussen's opinion was reasoned and documented, he properly gave the opinion less weight than the contrary opinions of Drs. Zaldivar and Castle because Dr. Rasmussen's opinion was based upon less documentation than the opinions of Drs. Zaldivar and Castle. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); Decision and Order at 14-15; Director's Exhibits 7, 19; Employer's Exhibits 5, 14, 19. Specifically, the administrative law judge noted that while all three physicians examined claimant, Dr. Rasmussen did not review the medical evidence of record, including the December 1997 CT scan and objective studies of record, while Drs. Zaldivar and Castle based their opinions on a review of the medical evidence, as well as their own respective examinations of claimant. *Id*. In addition, the administrative law judge properly found that the opinions of Drs. Zaldivar and Castle were supported by the remaining opinions of record, which were submitted by Drs. Ranavaya, Fino, Morgan and Dahhan, who found that claimant does not suffer from pneumoconiosis. *See Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); Decision and Order at 15; Employer's Exhibits 3, 4, 14, 17, 18. We affirm, therefore, the administrative law judge's finding that the medical opinion evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Inasmuch as the administrative law judge properly found that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), a requisite element of entitlement, the administrative law judge properly denied benefits. *Trent*, *supra*; *Gee*, *supra*; *Perry*, *supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

i.The remaining eight films of record were taken between May 8, 1995 and February 9, 1999, and were uniformly read as negative for pneumoconiosis. Director's Exhibit 22; Employer's Exhibits 2, 4, 7-12, 16, 18, 19.

ii.The June 20, 1997 film was read as negative for pneumoconiosis by Drs. Ranavaya and Zaldivar, who are B readers, and Drs. Wiot, Shipley, Kim, Scott, Wheeler, Morgan and Spitz, who are dually-qualified B reader/ Board-certified radiologists. Director's Exhibits 11, 22; Employer's Exhibits 1, 2, 4, 7, 9.

iii.The record does not contain any evidence of complicated pneumoconiosis, and, consequently, claimant does not qualify for the presumption under 20 C.F.R. §718.304. Furthermore, since the instant claim for benefits was filed after January 1, 1982, the presumption at 20 C.F.R. §718.305 does not apply. Finally, as this is not a survivor's claim, the presumption at 20 C.F.R. §718.306 is inapplicable.