

BRB No. 08-0102 BLA

L.J. )  
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 Claimant-Petitioner )  
 )  
 v. ) DATE ISSUED: 08/27/2008  
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 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

L.J., Hyden, Kentucky, *pro se*.

Sarah M. Hurley (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting Associate Solicitor of Labor; 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (06-BLA-5485) of Administrative Law Judge Joseph E. Kane 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 involves a claim filed on February 2, 2005. After crediting claimant with five years of coal mine employment,<sup>1</sup> the administrative law judge found that the evidence did not establish the

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<sup>1</sup> The record reflects that claimant's coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

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 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*).

The administrative law judge correctly found that there were no positive x-ray interpretations in the record.<sup>2</sup> Decision and Order at 6. Consequently, we affirm the administrative law judge's finding that the x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

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<sup>2</sup> Dr. Wicker interpreted claimant's March 10, 2005 x-ray as negative for pneumoconiosis. Director's Exhibit 20. Dr. Barrett interpreted this x-ray for quality purposes only. Director's Exhibit 21.

The two additional x-ray interpretations contained in claimant's hospital and treatment records do not support a finding of pneumoconiosis. Claimant's Exhibit 1. Dr. Datu interpreted claimant's November 17, 2004 x-ray as revealing "no active lung disease." *Id.* Dr. Ayos interpreted claimant's December 14, 2005 x-ray as revealing "no active cardiopulmonary disease." *Id.*

Because there is no biopsy evidence of record, the administrative law judge properly found that claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 6. Furthermore, the administrative law judge properly found that claimant is not entitled to any of the statutory presumptions set forth at 20 C.F.R. §718.202(a)(3).<sup>3</sup> *Id.*

The administrative law judge also correctly found that there were no medical opinions in the record supportive of a finding of pneumoconiosis. The administrative law judge accurately noted that Dr. Wicker, the physician who performed the Department of Labor-sponsored pulmonary evaluation, found no evidence of pneumoconiosis. Decision and Order at 7; Director's Exhibit 20. Although several physicians diagnosed chronic obstructive pulmonary disease and/or chronic bronchitis in claimant's medical treatment records, *see* Director's Exhibit 19; Claimant's Exhibit 1, none of these physicians related these conditions to claimant's coal mine employment. *See* 20 C.F.R. §718.201(a)(2). Consequently, these diagnoses do not support a finding of "legal pneumoconiosis."<sup>4</sup> We, therefore, affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, 11 BLR at 1-27; *Gee*, 9 BLR at 1-5; *Perry*, 9 BLR at 1-2. Consequently, we need not address the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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<sup>3</sup> Because there is no evidence of complicated pneumoconiosis in the record, the Section 718.304 presumption is inapplicable. *See* 20 C.F.R. §718.304. The Section 718.305 presumption is inapplicable because claimant filed this claim after January 1, 1982. *See* 20 C.F.R. §718.305(e). Finally, because this claim is not a survivor's claim, the Section 718.306 presumption is also inapplicable. *See* 20 C.F.R. §718.306.

<sup>4</sup> "Legal pneumoconiosis" includes any chronic disease or impairment of the lung and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge