

BRB No. 98-1439 BLA

ROBERT LEE BROWNING)
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 Claimant-Petitioner)
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 v.)
)
 ISLAND CREEK COAL COMPANY)
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 Employer-Respondent)
)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED) DATE ISSUED: _8/6/99___
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Robert Lee Browning, Whitman, West Virginia, *pro se*.

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

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (97-BLA-0242) of Administrative Law Judge Clement J. Kennington 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). The administrative law judge credited the miner with “in excess” of thirty-two years of coal mine employment. Decision and Order at 3. Applying the regulations at 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). Decision and Order at 7-9. Accordingly, benefits were denied.

¹Claimant is Robert Lee Browning, the miner, who filed his claim for benefits on March 4, 1996. Director's Exhibit 1.

On appeal, claimant generally contends that the administrative law judge erred in denying 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 will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). 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).

Pursuant to Section 718.202(a)(1), the administrative law judge considered the twenty-nine readings of eight x-rays contained in the record. The administrative law judge properly found the readings of the physicians who are both B-readers³ and Board-certified radiologists to "merit the highest degree of consideration." Decision and Order at 8; *see Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Trent v. Director,*

²We affirm the administrative law judge's length of coal mine employment finding as it is not adverse to claimant and is unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-16 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

OWCP, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). In considering this group of x-ray readings, the administrative law judge noted that there are only two positive interpretations rendered by Drs. Deardorff and Francke, Director's Exhibit 14, Claimant's Exhibit 2, and numerous negative readings. Decision and Order at 8.

The administrative law judge rationally found the positive reading of the June 23, 1997 x-ray by Dr. Deardorff to be undermined by the readings of Drs. Wiot, Shipley, and Spitz, all B-readers and Board-certified radiologists, who found this film to be unreadable.⁴ *Id*; see *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-10 (1985). Additionally, the administrative law judge reasonably found Dr. Francke's positive reading of the March 29, 1996 x-ray to be unexplained and outweighed by the negative readings of physicians who commented "as to why they believed that Claimant did not suffer from pneumoconiosis, and offered alternative theories as to claimant's ailment." Decision and Order at 8; see *Tackett, supra*; *Calfee, supra*; see also *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). Inasmuch as the administrative law judge properly concluded that the two positive x-ray readings of Drs. Deardorff and Francke, "[w]hen held up against the negative findings of multiple highly qualified and experienced physicians," are insufficient to establish the existence of pneumoconiosis by a preponderance of the evidence, Decision and Order at 8, we affirm his Section 718.202(a)(1) finding. See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

There is no biopsy or autopsy evidence in the record that establishes the existence of pneumoconiosis. See 20 C.F.R. §718.202(a)(2). The presumptions found at Sections 718.304, 718.305, and 718.306 are inapplicable to this living miner's claim filed after January 1, 1982, see *Kubachka v. Windsor Power House Coal Corp.*, 11 BLR 1-171 (1988), in which there is no evidence of complicated pneumoconiosis, see generally *Trent, supra*. See 20 C.F.R. §718.202(a)(3). Therefore, we affirm the administrative law judge's findings pursuant to these sections.

Pursuant to Section 718.202(a)(4), Dr. Ranavaya found the existence of pneumoconiosis whereas Drs. Hippensteel, Crisalli, and Fino did not. In considering the

⁴While Drs. Scott and Wheeler, who are also B-readers and Board-certified radiologists, did not find this film to be unreadable, they found the x-ray to be negative and found its quality to be substandard, at level three. Employer's Exhibit 14.

medical opinion evidence, the administrative law judge permissibly discredited Dr. Ranavaya's opinion because he found it to be "based only on the history provided to him by Claimant and his own reading of a single x-ray." Decision and Order at 9; *see Worhach v. Director, OWCP*, 17 BLR 1-105 (1993)(medical opinion that purports to be based on clinical findings beyond x-ray may be found to be based solely on x-ray reading); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *cf. Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8 (1996). Moreover, the administrative law judge reasonably found the contrary opinion of Dr. Crisalli to be "well-reasoned and well-documented" and supported by the opinions of Drs. Fino and Hippensteel. *Id.*; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Thus, the administrative law judge concluded that "Claimant has failed to establish the existence of pneumoconiosis by a preponderance of the evidence" because the opinions of Drs. Crisalli, Fino, and Hippensteel "provide a more clear understanding of Claimant's medical condition than the less complete and discredited findings of Dr. Ranavaya." *Id.* Therefore, we affirm the administrative law judge's Section 718.202(a)(4) finding. *See Anderson, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988).

Inasmuch as we affirm the administrative law judge's Section 718.202(a) finding, that claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement under Part 718, *see Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we also affirm his denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge