

BRB No. 98-1448 BLA

ANNA WRAY NAPIER)
(Widow of BILLY GENE NAPIER))

Claimant-Petitioner)

v.)

BENCO, INCORPORATED)

and)

WESTMORELAND COAL COMPANY))

Employers-Respondents)

DIRECTOR, OFFICE OF WORKERS')

COMPENSATION PROGRAMS, UNITED)

STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED:

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.

Anna Wray Napier, Pennington Gap, Virginia, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for Westmoreland Coal Company/employer.

Rita Roppolo (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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 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 - Denial of Benefits (97-BLA-1343) of Administrative Law Judge Richard T. Stansell-Gamm on a survivor's 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). Adjudicating this survivor's claim pursuant to 20 C.F.R. Part 718, the administrative law judge initially credited the miner with twenty-one years and nine months of qualifying coal mine employment, dismissed Westmoreland Coal Company as the potential responsible operator, and designated Benco, Incorporated as the responsible operator. Next, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer-Westmoreland Coal Company, responds, urges affirmance of the denial. Employer-Benco, Incorporated has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), filed a letter responding to this *pro se* appeal, urging affirmance of the denial.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the Decision and Order and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial

¹ Claimant, Anna Wray Napier, filed a survivor's claim for benefits on August 28, 1996. Director's Exhibit 1. Mrs. Napier is the widow of Billy Gene Napier, the miner, who died on July 26, 1996. Director's Exhibit 8. The miner originally filed an application for benefits on October 19, 1992. Director's Exhibit 37. The miner's claim was denied on March 12, 1993 and August 12, 1993. Director's Exhibit 37. There is no evidence of record indicating that the miner pursued his claim further.

evidence, contains no reversible error, and therefore, it is affirmed. Relevant to Section 718.202(a)(1), the administrative law judge correctly found that, of the thirty-six x-ray interpretations of fourteen x-ray films of record, two are positive and thirty-four are negative for the existence of pneumoconiosis. Director's Exhibits 11, 12, 15-22, 35-37; Employer's Exhibit 3. The administrative law judge, within a proper exercise of his discretion, found the positive readings entitled to less weight because these readings were rendered by Dr. Gaziano, who is a B-reader, whereas the negative interpretations were provided by the remaining eleven physicians, several of whom are both Board-certified radiologists and B-readers. See 20 C.F.R. §718.202(a)(1); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 12. Because the administrative law judge properly accorded probative weight to the negative interpretations and permissibly found that the preponderance of the x-ray evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(1), we affirm this determination inasmuch as it is rational and supported by substantial evidence. 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); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986); Decision and Order at 12.

Relevant to Sections 718.202(a)(2), a review of the biopsy evidence reveals the opinions of three physicians. All three physicians, Drs. Van Buren, Hansbarger, and Bush, reviewed the pathological slides and opined that the findings of anthracotic pigmentation were insufficient to warrant the diagnosis of coal workers' pneumoconiosis.² Director's Exhibit 10; Employer's Exhibits 2-4. Inasmuch as the administrative law judge reasonably found that all three physicians opined that the degree of "black pigmentation" failed to warrant a diagnosis of pneumoconiosis, we affirm his Section 718.202(a)(2) determination that the preponderance of the biopsy evidence failed to establish pneumoconiosis. 20 C.F.R. §718.202(a)(2); see *Dagnan v. Blue Diamond Coal Mining Co.*, 994 F.2d 1536, 1541, 18 BLR 2-203, 2-209 (11th Cir. 1993); Decision and Order at 12. Likewise, we affirm the administrative law judge's determination that the existence of pneumoconiosis cannot be established pursuant to Section 718.202(a)(3). The instant survivor's claim was filed on August 28, 1996, Director's Exhibit 1, therefore, the presumptions set forth in Sections 718.305 and 718.306 are inapplicable. See 20 C.F.R. §§718.305, 718.306. Furthermore, the

² On September 10, 1997, Dr. Fino reviewed Dr. Hansbarger's pathology report regarding the biopsy slides; consequently, Dr. Fino opined that his opinion that the miner did not suffer from coal workers' pneumoconiosis remained unchanged. Employer's Exhibit 3.

record is devoid of evidence establishing the presence of complicated pneumoconiosis. *See* 20 C.F.R. §718.304; Decision and Order at 8 n.15. Hence, we affirm the administrative law judge's determinations that claimant failed to establish pneumoconiosis under Sections 718.202(a)(2) and (a)(3).

Turning to the administrative law judge's consideration of the medical opinion evidence pursuant to Section 718.202(a)(4), a review of the record reveals that Drs. Dahhan, Fino, Hansbarger, and Kapaida opined that coal workers' pneumoconiosis was absent in the deceased miner. Director's Exhibit 37; Employer's Exhibits 1-3. Dr. Taylor, the miner's treating physician, completed the death certificate and stated that the cause of the miner's death was renal failure due to diabetes mellitus. Director's Exhibit 8. The evidence of record also contains a plethora of hospital records, none of which document the presence of pneumoconiosis in the deceased miner. Director's Exhibits 9, 34, 35, 37. Inasmuch as the administrative law judge correctly found that there is no medical opinion of record diagnosing the existence of clinical pneumoconiosis or pneumoconiosis as defined by the Act, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See* 20 C.F.R. §718.201; *Handy v. Director, OWCP*, 16 BLR 1-73, 1-76 (1990); Decision and Order at 18-19.

Inasmuch as claimant failed to satisfy her burden of affirmatively establishing that the miner suffered from coal workers' pneumoconiosis under Section 718.202(a), a prerequisite to a finding of death due to pneumoconiosis pursuant to Section 718.205, we affirm the administrative law judge's denial of benefits as rational and supported by substantial evidence. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge