BRB No. 98-1466 BLA

HENRY A. MANN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RHONDA COAL COMPANY	)	DATE ISSUED: 8/30/99
	)	
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 of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Henry A. Mann, Raven, Virginia, *pro se.*

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen Chartered), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order of Benefits (97-BLA-1269) of Administrative Law Judge Daniel J. Roketenetz 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 claimant with thirty-one and one-half years of coal mine employment and 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. In response, employer argues that the administrative law judge's denial of benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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 supported by substantial evidence, are rational, and are consistent with applicable 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 (1985).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203 and 718.204. Failure to establish any one of these elements precludes entitlement. *See Perry v. Director, OWCP,* 9 BLR 1-1 (1986) (*en banc*).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a). In his analysis of the seven x-ray interpretations of record under Section 718.202(a)(1), the administrative law judge correctly found that only Dr. Bassali, a Board-certified radiologist and B reader, rendered positive readings of two of the three x-rays submitted for interpretation. In contrast, Drs. Lippman, Forehand and Hippensteel, who are B readers, and Drs. Wheeler and Scott, who are dually qualified as Board-certified radiologists and B readers, rendered negative interpretations of two of the three films of record. Decision and Order 4-5; Director's Exhibits 10, 11, 21-23. As the majority of qualified physicians interpreted the x-ray evidence as negative for pneumoconiosis, the administrative law judge properly found that the preponderance of the x-ray evidence does not support a finding of pneumoconiosis under Section 718.202(a)(1). Decision and Order at 5; *see Adkins v. Director, OWCP,* 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).

In addition, because the record contains no biopsy evidence or evidence of complicated pneumoconiosis, *see* 20 C.F.R. §718.304, and the presumptions

contained in 20 C.F.R. §§718.305 and 718.306 are inapplicable in this living miner's claim filed after January 1, 1982, *see* 20 C.F.R. §718.305(e); Director's Exhibit 1, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) and (a)(3). Decision and Order at 5.

Finally, the administrative law judge correctly found that none of the physicians of record, namely Drs. Fino, Hippensteel and Iosif, diagnosed pneumoconiosis pursuant to Section 718.202(a)(4). Decision and Order at 6-7; Director's Exhibits 8, 23; Employer's Exhibits 1, 8. The administrative law judge also noted that although Dr. Iosof diagnosed chronic obstructive pulmonary disease and chronic bronchitis, he did not relate these conditions to coal dust exposure. Decision and Order at 6; Director's Exhibit 23. The administrative law judge further indicated that Dr. Hippenteel diagnosed obstructive airways impairment due to a diaphragm dysfunction unrelated to coal dust exposure. *Id.* The opinions of Drs. Iosof and Hippensteel are insufficient to establish the existence of pneumoconiosis, as the lung conditions diagnosed were not associated with coal dust exposure. *See Perry, supra.* Accordingly, substantial evidence supports the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(4). We affirm, therefore, the administrative law judge's determination that claimant has failed to establish the existence of pneumoconiosis at Section 718.202(a)(1)-(4).

Inasmuch as claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement, an award of benefits under Part 718 is precluded. *See Perry, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge