BRB Nos. 05-0651 BLA

CYDIS DIXON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
COASTAL COAL COMPANY	)	DATE ISSUED: 12/15/2005
	)	
and	)	
	)	
ANR COAL COMPANY	)	
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Davidson, P.S.C.), Hazard, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (2004-BLA-5188) of Administrative Law Judge Daniel J. Roketenetz 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 found a coal mine employment history of at least thirty-two years of qualifying coal mine employment pursuant to the parties' stipulation and, after considering all of the evidence of record,

found that claimant failed to establish the existence of pneumoconiosis or total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.204(b). Decision and Order at 4-14. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in not finding the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4) and further erred in not finding total disability established pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer responds and urges that the denial of benefits be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has not filed a brief in this appeal.[1]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error.[2] Claimant's assertion that the administrative law judge erred in failing to find the existence of pneumoconiosis established lacks merit. The administrative law judge considered the entirety of the x-ray evidence of record and rationally found that the evidence of record was insufficient to establish the existence of

[1] The administrative law judge's length of coal mine employment determination, and his finding that the evidence of record could not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in the Commonwealth of Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

pneumoconiosis. *See Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). He permissibly found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) because the preponderance of x-ray readings by physicians with superior qualifications was negative for the disease. Director's Exhibits 9, 10, 18; Employer's Exhibit 3; Decision and Order at 5-7; *Staton v. Norfolk & Western Railroad Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).[3] We, therefore, reject claimant's argument and affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Likewise, claimant's assertion that the administrative law judge erred in not finding the existence of pneumoconiosis established based upon the medical opinions of Drs. Baker and Simpao is rejected. Claimant's Brief at 4-5. In determining whether the existence of pneumoconiosis was established pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge reviewed all of the medical opinion evidence of record and rationally considered the quality of the evidence in determining whether the opinions were supported by their underlying documentation and were adequately explained. *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Worhach*, 17 BLR at 1-108; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR at 1-155; *Kuchwara*, 7 BLR at 1-170; Decision and Order at 7-11. The administrative law judge acted within his discretion, as fact-finder, in concluding that Dr. Baker's opinion was insufficient to support a finding of clinical or legal pneumoconiosis because the physician's diagnosis of clinical pneumoconiosis was based solely on claimant's coal mine employment history and his positive x-ray reading, *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Jericol Mining , Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 22 BLR 2-495 (6th Cir. 2002); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985), and the physician's diagnosis of bronchitis by history does not satisfy the diagnoses of "legal" pneumoconiosis set forth in Section 718.201. 20 C.F.R. §718.201; Decision and Order at 10; Director's Exhibit 23; Employer's Exhibit 3. The administrative law judge further

[3] A "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 for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16 , 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

concluded that Dr. Simpao's opinion diagnosing the existence of clinical and legal pneumoconiosis, though well-reasoned and well-documented, was not sufficient to support a finding of pneumoconiosis pursuant to Section 718.202(a)(4). The administrative law judge found that the opinion did not carry claimant's burden at Section 718.202(a)(4) as the opinion was countered by the medical report of the equally well-qualified Dr. Jarboe finding that claimant did not have clinical or legal pneumoconiosis, *i.e.*, Dr. Jarboe opined that while claimant suffered from bronchitis, he did not attribute the condition to coal mine employment, and specifically ruled out the existence of coal workers' pneumoconiosis, Director's Exhibit 18. Thus, the administrative law judge permissibly found the medical evidence not affirmatively supportive of a finding of pneumoconiosis at Section 718.202(a)(4). Decision and Order at 8-10; 20 C.F.R. §718.201; *see Napier*, 301 F.3d 703, 22 BLR 2-537; *Stephens*, 298 F.3d 511, 22 BLR 2-495; *Tedesco*, 18 BLR 1-103. We therefore affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Because claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to 20 C.F.R. Part 718, entitlement is precluded and we need not address the administrative law judge's additional findings pursuant to 20 C.F.R. §718.204. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge