

BRB No. 98-1609 BLA

ARZIE SHEETS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
CONSOLIDATION COAL COMPANY))	
)	
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 John C. Holmes, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, West Virginia, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0374) of Administrative Law Judge John C. Holmes 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).¹ The administrative law judge credited claimant with twenty-eight years of coal mine employment, and found that claimant established the existence of simple pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). However, the administrative law judge denied benefits because claimant did not establish total disability under 20 C.F.R. §§718.204(c)(1)-(4) nor complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Claimant appeals, challenging the administrative law judge's finding under Section 718.304(a)(1). In response, employer argues that the administrative law judge's denial is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Under Section 718.304(a)³, claimant argues that the administrative law judge erred in accepting the contentions of the employer's physicians that claimant did not suffer from pneumoconiosis, particularly when none of the employer's physicians was able to diagnose the cause of the markings on claimant's x-rays of large opacities classified as Category A by Drs. Gaziano and C.R. Daniel. Claimant argues that the

¹This claim was filed on March 11, 1997. Director's Exhibit 1.

²Inasmuch as the parties do not challenge the administrative law judge's finding of twenty-eight years of coal mine employment, or his findings under 20 C.F.R. §§718.202(a)(1), and 718.204(c)(1)-(4), these findings are affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³The administrative law judge did not make specific findings at 20 C.F.R. 718.304(b) and (c), however, the record does not include any biopsy evidence in this living miner's claim or other evidence, except x-rays, diagnosing complicated pneumoconiosis and claimant did not argue otherwise.

x-rays “met the standards for demonstrating the presence of complicated pneumoconiosis.” Claimant’s Brief at 5. Further, claimant argues that “the mere fact that employer’s physicians disagreed with the diagnosis the [A]ct[’]s definition of pneumoconiosis, is insufficient as a matter of law to allow the ALJ to credit their opinions.” *Id.*

Contrary to claimant’s contention, the administrative law judge found that claimant established the existence of simple pneumoconiosis. Decision and Order at 4. The objective evidence does not demonstrate, without contradiction, that opacities on x-rays are greater than one centimeter. Of the fifty-three interpretations of the nine x-rays of record, the administrative law judge properly noted that only Drs. C.R. Daniel and Gaziano diagnosed complicated pneumoconiosis, Category A. *Id.*; Director’s Exhibits 14, 15. The administrative law judge also noted that while Dr. Wiot observed size A nodules in the February 26, 1998 x-ray, which he classified as consistent with complicated pneumoconiosis, Dr. Wiot concluded that the nodules were not caused by coal dust exposure. Employer’s Exhibit 1. Further, the administrative law judge properly found that Dr. Gaziano also commented that while the large opacities were due “probable” to complicated pneumoconiosis, further testing would have to be conducted to rule out lung cancer. Decision and Order at 4; Director’s Exhibit 14. In contrast, Drs. Scott, Wheeler, Spitz and Shipley, all Board-certified radiologists and B readers, as well as Drs. Fino, Caslte and Morgan, all B readers, concluded that the opacities on x-rays taken from January 29, 1992 to February 26, 1998 were not greater than one centimeter. Director’s Exhibits 23, 24, 29; Employer’s Exhibits 1-9.

The administrative law judge credited the opinions of Drs. Morgan, Wiot and Castle, who agreed that the rapid progress of the opacities from 0 to 3.3 revealed in the x-rays taken from 1992 to 1997 denoted that a disease other than complicated pneumoconiosis was occurring in the claimant’s lungs. Decision and Order at 5; Director’s Exhibit 23; Employer’s Exhibits 4, 5, 8. The majority of qualified physicians, namely Drs. Castle, Wiot, Dahhan, Morgan and Fino, did not relate claimant’s pulmonary changes to complicated pneumoconiosis but opined that they were probably caused by sarcoidosis, tuberculosis or a metastatic disease. Even Dr. Gaziano, who diagnosed complicated pneumoconiosis, suggested further testing to rule out cancer. Contrary to claimant’s contention, employer need not establish the precise cause of claimant’s respiratory or pulmonary disease in order to constitute substantial evidence to support a finding that the irrebutable presumption under Section 718.304 was not invoked. *See generally Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Moore v. Dixie Pine Coal Co.*, 8 BLR 1-334 (1985). Therefore, the administrative law judge after considering all the evidence, properly rejected the

diagnoses of complicated pneumoconiosis by Drs. Castle, Wiot, Dahhan, Morgan and Fino. *Melnick v Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*).

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