

BRB No. 99-0312 BLA

JAMES HAROLD MCKENDREE)
))
Claimant-Petitioner)
))
v.)
))
CONSOLIDATION COAL COMPANY) DATE ISSUED:
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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 Denying Benefits of Lawrence P. Donnelly, Administrative Law Judge, United States Department of Labor.

James Harold McKendree, Mullens, West Virginia, *pro se*.

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

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (97-BLA-0986) of Administrative Law Judge Lawrence P. Donnelly on a duplicate 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). In the instant case, the administrative law judge found that the evidence was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d), and insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits on the duplicate claim.¹

¹ Claimant's prior claims filed in 1980 and 1991 were denied. The instant claim was filed on July 2, 1996. Director's Exhibit 1.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Antonio v. Bethlehem Mines Corp.*, 6 BLR 1-702 (1983). 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer, in response, asserts that the administrative law judge's findings are supported by substantial evidence, and urges affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a brief in the instant case.

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Considering all the x-ray readings of record, the administrative law judge permissibly found that the existence of pneumoconiosis was not established at Section 718.202(a)(1) based on the preponderance of negative interpretations by physicians possessing superior qualifications. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). The administrative law judge also correctly concluded that the existence of pneumoconiosis was not established at Section 718.202(a)(2) as the record did not contain any autopsy or biopsy evidence, and that the existence of pneumoconiosis was not established at Section 718.202(a)(3) as none of the presumptions contained therein were applicable. 20 C.F.R. §§718.304; 718.305, 718.306. Accordingly, we affirm the administrative law judge's findings under Section 718.202(a)(2) and (3). Additionally, the administrative law judge permissibly found that the preponderance of the medical opinion evidence from the physicians with superior qualifications failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). Accordingly, the administrative law judge's finding that the existence of pneumoconiosis was not established at Section 718.202(a)(1)-(4) is affirmed.

The administrative law judge also permissibly found that the preponderance of the medical evidence failed to establish a totally disabling respiratory impairment. See 20 C.F.R. §718.204(c). *Clark, supra*; *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983).²

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

JAMES F. BROWN
Administrative Appeals Judge

² In considering the newly submitted evidence, the administrative law judge rationally concluded that a material change in conditions was not established. See *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied*, 519 U.S. 1090 (1997).