BRB No. 98-0752 BLA

DONALD NOAH RATLIFF	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED:
	)	
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.

Donald Noah Ratliff, Davenport, Virginia, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order (97-BLA-1769) 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). Initially, claimant filed a claim in July 1994. Director's Exhibit 26. This claim was finally denied by the district director in July 1995 on the basis that claimant failed to establish any of the elements of entitlement. *Id*. The miner filed a second claim in January 1997. Director's Exhibit 1. The administrative law judge, reviewing the case pursuant to 20 C.F.R. Part 718, found that the evidence of

[1] Tim White, a benefits counselor with Stone Mountain Health Services in Vansant, Virginia, on behalf of claimant, requested an appeal of the administrative law judge's Decision and Order denying benefits, but Mr. White is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

record was insufficient to establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.202(a), and that the evidence was insufficient to establish disability by a pulmonary impairment, *see* 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, contending generally that the administrative law judge erred in denying benefits. Employer has submitted a response brief supporting affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not respond to the appeal unless specifically requested to do so by the Board.[2]

In an appeal by a claimant proceeding 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 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 rational, supported by substantial evidence, and in accordance with 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 (1965).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is a contributing cause of a total respiratory disability. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Failure to prove any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director,*

[2] We note that the administrative law judge did not render a finding as to claimant's years of coal mine employment, which is an important factor in claims filed under the Act as it determines which presumptions are available to a miner under the Act and the regulations. *See* 30 U.S.C. §901 *et seq*.; 20 C.F.R. §718.203(b). However, inasmuch as the administrative law judge properly found the record devoid of any evidence supporting a finding that claimant suffers from pneumoconiosis, as discussed *infra*, we decline to remand this case to the administrative law judge for a determination of the number of years that claimant worked in coal mine employment. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

OWCP, 9 BLR 1-1 (1986)(*en banc*).

With respect to Section 718.202(a)(1), the administrative law judge properly found that all of the thirteen x-ray readings of record were negative for pneumoconiosis. Director's Exhibits 17, 18, 26; Employer's Exhibits 4-6. We, therefore, affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(1). Furthermore, the administrative law judge correctly found that, with regard to Section 718.202(a)(4), all four physicians of record, Drs. Iosif, Dahhan, Castle, and Forehand, found that claimant does not suffer from pneumoconiosis.[3] We, therefore, affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4).

Finally, the administrative law judge did not render any findings as to whether the evidence was sufficient to establish the existence of pneumoconiosis under Section 718.202(a)(2) and (a)(3). The record does not contain any autopsy or biopsy evidence of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(2). Further, there is no evidence of record of complicated pneumoconiosis, *see* 20 C.F.R. §718.304, the instant claim was filed after

[3] Dr. Iosif issued two reports in which he found no evidence of pneumoconiosis. Director's Exhibit 26; Employer's Exhibit 5. In a September 1994 report, Dr. Iosif, in addition to finding no evidence of pneumoconiosis, stated that claimant's impairing factors are not directly related to pneumoconiosis and/or previous exposure to coal dust. Director's Exhibit 26. Dr. Dahhan found that claimant did not have coal worker's pneumoconiosis. Employer's Exhibit 4. Dr. Castle, in two reports and his deposition, found no evidence of coal worker's pneumoconiosis. Director's Exhibit 26; Employer's Exhibits 1, 6. Dr. Forehand found no evidence of active pulmonary disease and no respiratory impairment. Director's Exhibit 15.

January 1, 1982, *see* 20 C.F.R. §718.305(e), Director's Exhibit 1; *see also* Director's Exhibit 26, and the claim is not a death claim, *see* 20 C.F.R. §718.306. 20 C.F.R. §718.202(a)(3). Therefore, claimant is precluded from establishing the existence of pneumoconiosis under Section 718.202(a)(2) and (a)(3).

Since we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis, an essential element of entitlement, we must also affirm the denial of benefits.[4] *See Trent*, *supra*. Consequently, we decline to address the administrative law judge's findings regarding total disability, inasmuch as any errors therein would be harmless. *See Perry*, *supra*; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[4] The administrative law judge's error in not addressing whether claimant had established a material change in conditions since the prior denial, *see* 20 C.F.R. §725.309; *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), is harmless, inasmuch as the administrative law judge's finding of no entitlement on the merits is supported by substantial evidence. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge