BRB No. 04-0342 BLA

ARTHUR D. WALKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEW DELAWARE FUEL CORPORATION	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL-WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 01/07/2005
	)	
Employer/Carrier-Respondents	)	
	)	
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 Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Arthur D. Walker, Iaeger, West Virginia, *pro se*.

Robert Weinberger (Employment Programs Litigation Unit), Charleston, West Virginia, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Denying Benefits (03-BLA-5354) of Administrative Law Judge Mollie W. Neal on a claim for benefits 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 thirteen and three-quarters years of coal mine employment. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

Employer/carrier responds to claimant's appeal, urging affirmance of the administrative law judge's findings and denial of benefits. The Director, Office of Workers' Compensation Programs, has not submitted a brief in this appeal.

In an appeal by a claimant filed without the assistance of counsel, the Board will consider 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). 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).

First we consider the administrative law judge's findings pursuant to Section 718.202(a). The administrative law judge accorded greatest weight to the more recent x-rays and the interpretations of the physicians with the best qualifications.[1] The administrative law judge stated, *inter alia*, that he placed "greatest weight on the interpretation of Dr. Wiot, followed by those of Drs. Forehand and Zaldivar." Decision and Order at 6. Finding the "two most recent films were read unanimously as negative

[1] As the administrative law judge noted, the record contains five interpretations of three x-rays. The January 10, 1995 film was read as having a profusion of 1/1, by Dr. Subramaniam, whose qualifications are not contained in the record. Director's Exhibit 14. The November 7, 2001 film was read by Dr. Forehand, a B-reader, as completely negative, Director's Exhibit 12, by Dr. Binns, a B-reader and Board-certified radiologist, as showing no abnormalities, Director's Exhibit 13, and by Dr. Wiot, a B-reader and Board-certified radiologist, as completely negative, Employer's Exhibit 2. The January 15, 2003 film was read as completely negative by Dr. Zaldivar, a B-reader. Employer's Exhibit 1.

and by the best qualified readers," Decision and Order at 6, the administrative law judge found the preponderance of the x-ray evidence to be negative for the existence of pneumoconiosis. Decision and Order at 6.

We affirm the administrative law judge's finding that the x-ray evidence does not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) as it is supported by substantial evidence. The administrative law judge properly considered the qualifications of the physicians interpreting the x-ray evidence, as well as the quantity of the positive and negative interpretations,[2] in finding that the evidence does not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994); *see Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

Likewise, we affirm the administrative law judge's finding that the existence of pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(2) or (a)(3). The record does not contain any biopsy evidence or evidence of complicated pneumoconiosis in this living miner's claim filed in 2001. *See* 20 C.F.R. §§718.202(a)(2)-(3), 718.304, 718.305, 718.306.

Turning to the medical opinion evidence at 20 C.F.R. §718.202(a)(4), the administrative law judge found that neither of the two opinions of record, authored by Drs. Forehand and Zaldivar, "diagnosed coal workers' pneumoconiosis." Decision and Order at 7. A finding of either clinical pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1), or legal pneumoconiosis, *see* 20 C.F.R. §718.201(a)(2),[3] is sufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Dr. Forehand examined claimant and diagnosed chronic bronchitis due to cigarette smoking. Director's Exhibit 9. Dr. Zaldivar examined claimant and reviewed claimant's medical records. Dr. Zaldivar opined that there is no evidence to diagnose coal workers' pneumoconiosis or any dust disease of the lung. Employer's Exhibit 1.

We affirm the administrative law judge's finding that Dr. Forehand's diagnosis of chronic bronchitis due to cigarette smoking, *see* Director's Exhibit 9, "is not equivalent to a diagnosis of coal workers' pneumoconiosis." Decision and Order at 7; 20 C.F.R. §§ 718.201(a)(1)-(2), 718.202(a)(4). Inasmuch as the record does not contain any medical opinions diagnosing clinical or legal pneumoconiosis, we affirm the administrative law

[2] As discussed *supra*, n.1, there is only one positive x-ray reading of record, and it was provided by a physician whose credentials are not contained in the record.

[3] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

judge's finding that claimant has not established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See generally Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Because we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), one of the essential elements of entitlement at Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we affirm the administrative law judge's denial of benefits. Consequently, we need not address the administrative law judge's findings regarding the other elements of entitlement.

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