BRB No. 97-0699 BLA

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| CHARLES F. KEENE | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| 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 on Remand of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

Charles F. Keene, Jolo, West Virginia, *pro se*.

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

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of legal counsel,[1] appeals the Decision and Order on Remand (93-BLA-1696) of Administrative Law Judge Alfred Lindeman 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). This case is on appeal to the Board for the second time. In the original Decision and Order, Administrative Law Judge Reno E. Bonfanti credited claimant with twenty-one years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. He found that the evidence was

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

sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309, but insuffient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. Claimant appealed and in *Keene v. Island Creek Coal Co.*, BRB No. 95-1575 BLA (Mar. 27, 1996)(unpub.), the Board affirmed the administrative law judge's findings with respect to the length of coal mine employment and a material change in conditions as well as his findings that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2)-(3), but vacated the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1), (4) and remanded for further consideration thereunder. On remand, Administrative Law Judge Lindeman reopened the record at employer's request and allowed the parties to submit additional medical evidence. The administrative law judge then found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). Accordingly, benefits were denied. In the instant appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *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, are supported by substantial evidence, and are in accordance with 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order on Remand, 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 that there is no reversible error contained therein. In his consideration of the x-ray evidence, the administrative law judge listed the fifty-two x-ray readings of record and the qualifications of the readers. Decision and Order on Remand at 4-7. The administrative law judge gave greatest weight to the Board-certified radiologists and B-readers and noted that overall, five physicians read at least one x-ray as positive while twenty-three physicians concluded that the x-ray evidence was negative. Decision and Order on Remand at 7-8. The administrative law judge thus found that the preponderance of x-ray evidence was negative. Decision and Order at 8. As a result, the administrative law judge properly weighed the x-ray evidence and rationally accorded greater weight to the preponderance of x-ray interpretations by the readers with superior qualifications. *Adkins v. Director, OWCP*,

958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by substantial evidence.

In weighing the medical opinions of record, the administrative law judge also rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). *Perry*, *supra*. In so finding, the administrative law judge permissibly acted within his discretion as fact-finder in concluding that the opinions of Drs. Ramussen and Fielder, who opined that claimant suffered from pneumoconiosis, were outweighed by the medical opinions of Drs. Dahhan, Fino, Crisalli and Morgan, who found that claimant's condition was unrelated to coal mine employment, after noting their superior qualifications and finding that their opinions were well-documented and reasoned and consistent with the holding of the United States Court of Appeals for the Fourth Circuit in *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995). *See Clark*, *supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); Decision and Order at 8-10; Director’s Exhibits 36, 39; Claimant’s Exhibit 1; Employer’s Exhibits 1, 7, 9-11; Employer’s Exhibits on Remand 1-4. Inasmuch as the administrative law judge weighed all of the medical opinions and rationally concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis, we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) as it is supported by substantial evidence.

Accordingly, the Decision and Order on Remand of the administrative law judge denying benefits is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge