BRB No. 97-0740 BLA

DONNIE A. BLAIR Claimant-Petitioner v. WESTMORELAND COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Donnie A. Blair, Big Stone Gap, Virginia, *pro se*.[1]

John W. Walters (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (96-BLA-0931) of Administrative Law Judge Mollie W. Neal 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). After noting the parties' stipulation to twenty-two 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)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in

[1]Ron Carson, a benefits counselor with Stone Mountain Health Services in St. Charles, Virginia, filed an appeal on behalf of claimant, but is not representing him on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish 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, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

In her consideration of whether the x-ray evidence was sufficient to establish the existence of pneumoconiosis, the administrative law judge noted that Dr. Merchant indicated in a March 12, 1977 report that claimant suffered from complicated coal workers' pneumoconiosis, Stage B and Category 2 simple pneumoconiosis. Decision and Order at 4; Director's Exhibit 15. The administrative law judge noted that Dr. Merchant's qualifications are not found in the record. *Id.* The administrative law judge further noted that Dr. Castle, a B reader and Board-certified pulmonary specialist, reviewed Dr. Merchant's report and opined that if claimant had anything on his x-ray in 1977 that resembled a large opacity, it was transient in nature and not related to coal workers' pneumoconiosis or coal mine employment since claimant's more recent x-rays did not reveal the existence of complicated pneumoconiosis. Decision and Order at 4; Director's Exhibit 23. Based upon his superior radiological qualifications, the administrative law judge properly accorded Dr. Castle's opinion greater weight than that of Dr. Merchant regarding the existence of complicated pneumoconiosis. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 4.

In regard to the existence of simple pneumoconiosis, the administrative law judge properly accorded greater weight to the interpretations rendered by physicians with the dual qualifications of B reader and Board-certified radiologist. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). Inasmuch as all of the x-ray interpretations rendered by dually qualified physicians are negative for pneumoconiosis,[2] Director's Exhibits 13, 24; Employer's Exhibit 1, we affirm

[2]Dr. Sargent rendered a negative interpretation of claimant's February 9, 1995 x-ray. Director's Exhibit 13. Dr. Shipley rendered a negative interpretation of claimant's October 18, 1995 x-ray. Director's Exhibit 24. Dr. Wiot interpreted both the February 9, 1995 x-ray and the October 18, 1995 x-ray as negative for pneumoconiosis. Director's Exhibit 24;

the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Since the record does not contain any biopsy or autopsy evidence, the administrative law judge properly found that claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 3. Furthermore, the administrative law judge properly found that claimant is not entitled to any of the statutory presumptions arising under 20 C.F.R. §718.202(a)(3). *Id.* As previously discussed, *supra* at 2, the administrative law judge properly found the evidence insufficient to establish the existence of complicated pneumoconiosis. Decision and Order at 4. Consequently, claimant is not entitled to the Section 718.304 presumption. *See* 20 C.F.R. §718.304. The Section 718.305 presumption is inapplicable because claimant filed the instant claim after January 1, 1982. *See* 20 C.F.R. §718.305(e). Finally, inasmuch as the instant claim is not a survivor's claim, the Section 718.306 presumption is also inapplicable. *See* 20 C.F.R. §718.306.

In her consideration of whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis, the administrative law judge acted within her discretion in questioning Dr. Paranthaman's finding that claimant's chronic bronchitis was "probably due to coal dust exposure," Director's Exhibit 11, because it was "equivocal," Decision and Order at 7. See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). The administrative law judge properly credited Dr. Castle's opinion that claimant did not suffer from pneumoconiosis because she found that it was based upon more comprehensive documentation. *See Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); Decision and Order at 7; Director's Exhibit 23. Inasmuch as it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, *supra*.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

Employer's Exhibit 1. Each of these physicians is dually qualified as a B reader and Board-certified radiologist.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge