

BRB No. 97-0742 BLA

ARNOLD L. BAKER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CANTRELL MINING COMPANY,)	DATE ISSUED:
INCORPORATED)	
)	
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 Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Arnold L. Baker, Pound, Virginia, *pro se*.¹

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-1609) of Administrative Law Judge Edward Terhune Miller 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). 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). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Neither employer nor the

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

Director, Office of Workers' Compensation Programs, has participated in this appeal.

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. See *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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the Decision and Order and the relevant evidence of record, we conclude that the administrative law judge's decision is supported by substantial evidence and, therefore, it is affirmed. The administrative law judge properly found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), inasmuch as each of the twelve x-ray interpretations of record is negative for the existence of pneumoconiosis. Director's Exhibits 13, 14, 23; Employer's Exhibits 3-11. Next, we hold that the administrative law judge properly determined that the record is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2), inasmuch as there is no biopsy evidence of record. In addition, the administrative law judge properly determined that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. See 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption of pneumoconiosis at 20 C.F.R. §718.305 because he filed his claim after January 1, 1982. See 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim; therefore, the presumption of pneumoconiosis at 20 C.F.R. §718.306 is also inapplicable.

Finally, in determining whether claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Michos and Paranthaman.² Dr. Michos opined that claimant "has evidence of chronic bronchitis which **may be** related to a prior 27-year history of CME," Director's Exhibit 10 (emphasis added), and Dr. Paranthaman opined that claimant's "[c]hronic bronchitis is **probably** due to coal dust exposure," Director's Exhibit 8 (emphasis

²Claimant submitted a handwritten letter dated November 20, 1996 by Dr. Kanwal, claimant's treating physician, subsequent to the hearing in this case. However, the administrative law judge properly excluded the letter of Dr. Kanwal from the record because Dr. Kanwal's letter was submitted in violation of the 20-day rule and claimant failed to show good cause why Dr. Kanwal's letter was not exchanged in accordance with the 20-day rule. See Decision and Order at 2; 20 C.F.R. §725.456(b)(1) and (b)(2); *Farber v. Island Creek Coal Co.*, 7 BLR 1-428 (1984).

added). The administrative law judge properly assigned little evidentiary weight to the opinions of Drs. Michos and Paranthaman because they are equivocal. See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Therefore, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), as supported by substantial evidence.

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718.³ See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

³In view of our affirmance of the administrative law judge's denial of benefits under 20 C.F.R. §718.202(a), we need not address the administrative law judge's findings pursuant to 20 C.F.R. §718.204(c).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge