

BRB No. 97-0891 BLA

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| CLIFFORD N. DANIEL |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | Date Issued: |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Respondent |) | DECISION and ORDER |

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Clifford N. Daniel, Chattanooga, Tennessee, *pro se*.

Michelle Gerdano (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without the aid of counsel, the Decision and Order (95-BLA-2375) of Administrative Law Judge Jeffrey Tureck 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 fourteen years of coal mine employment established and adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ The administrative law judge found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly benefits were denied. Claimant's appeal, herein, followed. The Director,

¹Claimant filed a claim on November 12, 1993, Director's Exhibit 1.

Office of Workers' Compensation Programs, [the Director] responds, urging that the administrative law judge's Decision and Order denying benefits be affirmed.

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence, see *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1985). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law judge denying benefits is supported by substantial evidence. In order to establish entitlement to benefits under Part 718 in this living miner's claim, it must be established that claimant suffered from 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; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Failure to prove any one of these elements precludes entitlement, *id.*

Pursuant to Section 718.202(a)(1), the administrative law judge properly found that none of the x-ray evidence of record was positive for pneumoconiosis, Director's Exhibits 14-15, 17A-17B. Decision and Order at 3. In addition, the administrative law judge properly noted that there is no relevant autopsy or biopsy evidence of record pursuant to 20 C.F.R. §718.202(a)(2), see 20 C.F.R. §718.202(a)(2). Moreover, none of the available presumptions under 20 C.F.R. §718.202(a)(3) are applicable, see 20

C.F.R. §718.202(a)(3), *id.*²

Finally, pursuant to Section 718.202(a)(4), the administrative law judge considered all of the relevant medical opinion evidence of record from Drs. Soteris and Johnson. Dr. Soteris examined claimant, administered an x-ray, pulmonary function study and blood gas study and did not diagnose pneumoconiosis, Director's Exhibits 10-11. Dr. Johnson examined claimant and, based on an x-ray he read as 0/1, diagnosed "low density pneumoconiosis," Director's Exhibit 17A.

²Inasmuch as there is no evidence of complicated pneumoconiosis in the record, the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, is inapplicable, see 20 C.F.R. §§718.205(c)(3), 718.304. The presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, is inapplicable to this claim filed after January 1, 1982, see 20 C.F.R. §718.305(a), (e); Director's Exhibit 1. Finally, the presumption at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, is also inapplicable in this living miner's claim.

Moreover, inasmuch as the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, is inapplicable to this claim, see 20 C.F.R. §718.305(a), (e); Director's Exhibit 1, any error by the administrative law judge in determining the length of claimant's coal mine employment, as claimant contends on appeal, is harmless, see *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

The administrative law judge found Dr. Johnson's opinion unexplained and inconsistent with his negative x-ray reading³ and the other x-ray evidence of record, Decision and Order at 3. In addition, the administrative law judge found Dr. Johnson's opinion outweighed by the opinion of Dr. Soteres, whom the administrative law judge found had conducted a full and complete pulmonary examination based on objective testing and based upon and consistent with the other evidence of record, Decision and Order at 3-4.

The administrative law judge, within his discretion, found that Dr. Soteres's opinion was better supported by the objective evidence of record, including the negative x-ray evidence of record, see *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and that the opinion of Dr. Johnson was internally inconsistent, without providing sufficient explanation or reasoning, with the negative x-ray upon which Dr. Johnson based his opinion, in part, see *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Puleo v. Florence Mining Co.*, 8 BLR 1-198 (1984). In addition, an administrative law judge may give less weight to a physician's opinion which is supported by limited medical data and may give more weight to a physician's opinion which is supported by extensive documentation, see *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984), and a more complete or thorough examination, see *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). Thus, inasmuch as it is for the administrative law judge, as the trier-of-fact, to determine whether an opinion is documented and reasoned, see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, see *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) as supported by substantial evidence. Consequently, inasmuch as claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement, entitlement under Part 718 is precluded, see *Trent, supra*; *Perry, supra*.

³An x-ray interpretation of 0/1 is not a positive reading for the existence of pneumoconiosis, see 20 C.F.R. §718.102(b); *Trent, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge