BRB No. 92-0279 BLA

DENTON F. CAMPBELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CENTRAL APPALACHIAN 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 Upon Remand of Eric Feirtag, Administrative Law Judge, United States Department of Labor.

Denton F. Campbell, Elmira, West Virginia, *pro se.*

David S. Russo (Robinson & McElwee), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without legal representation, appeals the Decision and Order Upon Remand (87-BLA-376) of Administrative Law Judge Eric Feirtag 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 before the Board for the second time. In his original Decision and Order, the administrative law judge considered this duplicate claim pursuant to the provisions at 20 C.F.R. Part 718, and credited the miner with more than fifteen years of qualifying coal mine employment pursuant to the stipulation of the parties. The

administrative law judge found that the new evidence submitted subsequent to the denial of claimant's original claim was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and therefore found that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, benefits were denied. On appeal, the Board reversed the administrative law judge's finding and held that a material change in conditions had been established pursuant to Section 725.309. The Board further vacated the administrative law judge's finding on the merits of entitlement at Section 718.202(a), and remanded this case for the administrative law judge to address and weigh all of the evidence of record, including evidence submitted in the development of the initial claim.

On remand, the administrative law judge again found the evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), and consequently denied benefits. In the instant appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance. 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, supported by substantial evidence, and 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 pursuant to 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.,* 12 BLR 1-111 (1989); *Trent v. Director, OWCP,* 11 BLR 1-26 (1987).

In finding that the weight of the evidence was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1), the administrative law judge accurately determined that the record contained only one positive x-ray interpretation, and permissibly relied on the numerical preponderance of negative interpretations by equally qualified physicians. Decision and Order at 3; Decision and Order Upon Remand at 3, 4; *see Prater v. Clinchfield Coal Co.,* 12 BLR 1-121 (1989). We therefore affirm the administrative law judge's findings pursuant to

Section 718.202(a)(1), as supported by substantial evidence.

Since the record contains no biopsy or autopsy evidence, claimant cannot establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2). Further, inasmuch as the record contains no x-ray evidence of complicated pneumoconiosis, and the instant claim was filed after January 1, 1982 and is not a survivor's claim, the presumptions at 20 C.F.R. §§718.304, 718.305 and 718.306 are inapplicable, thus claimant cannot establish the existence of pneumoconiosis pursuant to Section 718.202(a)(3).

Lastly, in evaluating the medical opinions of record pursuant to Section 718.202(a)(4), the administrative law judge permissibly gave little weight to those reports which, if fully credited, would support a finding of the existence of pneumoconiosis, as Drs. Gaziano and Adajar did not explain how they reached their conclusions in light of the underlying objective evidence, *see* Director's Exhibits 21, 22; *see generally Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.,* 12 BLR 1-11 (1988); *Lucostic v. United States Steel Corp.,* 8 BLR 1-46 (1985); *Oggero v. Director, OWCP,* 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.,* 7 BLR 1-842 (1985); the West Virginia Occupational Pneumoconiosis Board provided no documentation or indication of the legal and medical criteria relied upon, *see* Director's Exhibit 5; *Clark, supra*; Dr. Scattaregia's inconsistent reports were rendered only three months apart, without any explanation or documentation offered to support the change in the physician's diagnosis, *see* Director's Exhibits 18, 23, 25; *see generally Fagg v. Amax Coal Co.,* 12 BLR 1-77 (1988); *Hopton v. United States Steel Corp.,* 7 BLR 1-12 (1984); *Surma v. Rochester & Pittsburgh Coal Co.,* 6 BLR 1-799 (1984); and Dr. Rasmussen admitted that he based his diagnosis of pneumoconiosis entirely upon the sole positive x-ray of record and claimant's history, but he had not personally interpreted the x-ray and he conceded that claimant's breathing impairments could be unrelated to coal mine employment exposure. Decision and Order Upon Remand at 3-5; Claimant's Exhibit 1; Employer's Exhibit 6; *Lucostic, supra.* The administrative law judge acted within his discretion as trier-of-fact in according determinative weight to the opinion of Dr. Crisalli, which was supported by the opinion of Dr. Bellotte, that claimant did not have pneumoconiosis, as his report was thorough and detailed, included an extensive review of the available objective evidence, and provided a well-reasoned explanation for his conclusions. Decision and Order Upon Remand at 4; Employer's Exhibits 4, 6; *Hall v. Director, OWCP,* 8 BLR 1-193 (1985); *Lucostic, supra.* Consequently, we affirm the administrative law judge's findings pursuant to Section 718.202(a)(4), as supported by substantial evidence.

Inasmuch as claimant failed to establish a requisite element of entitlement

pursuant to Part 718, *i.e.*, the existence of pneumoconiosis, we affirm the administrative law judge's finding that claimant is precluded from entitlement to benefits. *See Trent, supra*.

Accordingly, the Decision and Order Upon 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