

BRB No. 94-0267 BLA

WILLIAM MORROW)
)
 Claimant-Petitioner)
)
v.)
)
DRUMMOND COMPANY, INCORPORATED)
) DATE ISSUED:
 Employer-Respondent)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Revised Decision and Order of G. Marvin Bober, Administrative Law Judge, United States Department of Labor.

William Morrow, Quinton, Alabama, *pro se*.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (93-BLA-0194) of Administrative Law Judge G. Marvin Bober 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 involves a duplicate claim issue. Claimant filed his first claim for benefits on February 23, 1987. This claim was denied on June 24, 1987 as claimant failed to establish the existence of pneumoconiosis, total disability and total disability due to pneumoconiosis. See Director's Exhibit 29. Claimant filed a second claim for benefits on October 23, 1991. The administrative law judge determined that claimant has at least forty years of coal mine employment and considered the claim as a duplicate claim pursuant to 20 C.F.R. §725.309(d). The administrative law judge then considered the newly submitted evidence of record and found that it did

not support a finding of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, thus, that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d). Accordingly, benefits were denied. Claimant appeals this denial. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.

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

Upon considering the newly submitted evidence of record, the administrative law judge determined that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, thus, that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d). See Decision and Order at 6. The administrative law judge's finding of no material change in conditions is in error, however, as the record contains qualifying blood gas study evidence which, if credited, could change the prior administrative result regarding total disability. See Director's Exhibits 11, 13; 20 C.F.R. §718.204(c)(2); *Shupink v. LTV Steel Co.*, 17 BLR 1-24 (1992); *Rice v. Sahara Coal Co., Inc.*, 15 BLR 1-19 (1990). However, this error is harmless as the record contains no evidence that would support a finding of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a).¹ See Director's Exhibits 10-14, 16-18, 29; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Thus, as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement under 20 C.F.R. Part 718, the administrative law judge's denial of benefits is affirmed. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

¹All of the x-ray interpretations of record are negative for pneumoconiosis. The record contains no autopsy evidence and none of the presumptions contained at 20 C.F.R. §718.202(a)(3) are applicable to this claim. Finally, none of the medical reports of record diagnose claimant as suffering from pneumoconiosis.

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge