

BRB No. 93-2268 BLA

THOMAS C. ESTEP)
)
 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 Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Lawrence R. Webster (Webster & Lucas), Pikeville, Kentucky, for claimant.

Rodger Pitcairn (Thomas S. Williamson, Jr., Solicitor of Labor; 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, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (92-BLA-0986) of Administrative Law Judge Ainsworth H. Brown denying benefits and dismissing responsible operator and insurance carrier 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. Claimant filed his first claim for benefits on August 31, 1987, which was denied on January 28, 1988. Claimant filed a second claim for benefits on August 9, 1990. The administrative law judge considered this claim pursuant to 20 C.F.R. Part 718 and concluded that

claimant established twenty years of coal mine employment. The administrative law judge then considered all of the evidence of record and concluded that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the evidence of

record pursuant to 20 C.F.R. §718.202(a)(1). The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's Decision and Order.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On appeal, claimant contends that the administrative law judge erred in his weighing of the x-ray evidence pursuant to Section 718.202(a)(1). Specifically, claimant states that the record contains five positive x-ray interpretations and that the administrative law judge erroneously relied solely on the preponderance of the x-ray evidence. Upon considering the x-ray evidence of record, which consists of fifty-one interpretations of eighteen x-rays, the administrative law judge properly found that only four of the interpretations were positive for the existence of pneumoconiosis. See Decision and Order at 3; Director's Exhibits 14-17, 21, 38-41; Employer's Exhibits 3-10, 12-17, 19, 26-28. The administrative law judge further properly found that the record contains no indication of the qualifications of Dr. Sutherland, the physician who interpreted the four films as positive. See Decision and Order at 3; Director's Exhibits 17, 21. The administrative law judge then permissibly assigned more weight to the interpretations of the B-readers, all of whom presented negative interpretations. See Decision and Order at 3; Director's Exhibits 14-16, 41; Employer's Exhibits 3-10; 13-17, 19, 27, 28; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) is affirmed as it is supported by substantial evidence. Further, the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2)-(4) are affirmed as they are unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant also contends that the administrative law judge erred in failing to consider claimant's testimony when considering whether he established the existence of pneumoconiosis. However, lay testimony is generally insufficient to establish the existence of pneumoconiosis unless it is corroborated by at least a "quantum of medical evidence." *Trent, supra*. In this case, the administrative law judge permissibly found the weight of the medical evidence to be negative for the existence of pneumoconiosis. See Decision and Order at 3-4; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to

Section

718.202(a) is affirmed as it is supported by substantial evidence. 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).

Accordingly, the administrative law judge's Decision and Order 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