BRB No. 94-2480 BLA

BILLY R. BRITT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
P & P COAL COMPANY	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY)		
	)	DATE ISSUED:
Employer/Carrier-	)	
Respondents	)	
	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Reno E. Bonfanti, Administrative Law Judge, United States Department of Labor.

Billy R. Britt, Saint Charles, Virginia, *pro se*.
Mark E. Solomons (Arter & Hadden), Washington, D.C., for employer.

Edward Waldman (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 McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (93-BLA-1282) of Administrative Law Judge Reno E. Bonfanti 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. Claimant's first claim for benefits, filed on May 9, 1984, was denied on November 19, 1984. Director's Exhibit 22. Claimant filed a second claim for benefits on May 12, 1989. Pursuant to 20 C.F.R. Part 718, the administrative law judge credited claimant with ten years of qualifying coal mine employment and found the evidence insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309, the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total respiratory disability impairment pursuant to 20 C.F.R. §718.204(c).[1] Accordingly, benefits were denied.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board not to consider any contentions of error raised by employer regarding its designation as the responsible operator.

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

Pursuant to Section 718.202(a)(1), the administrative law judge considered the twenty interpretations of the six x-rays of record. Director's Exhibits 17, 22, 31, 45, 47, 60; Employer's Exhibits 1, 2, 4, 5, 7, 8, 10, 11, 13, 15. Only one of these

[1]The administrative law judge erred in finding that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 as the record contains evidence which, if fully credited, could change the prior administrative result. *See* Decision and Order at 2; Director's Exhibits 22, 47; *Shupink v. LTV Steel Co.*, 17 BLR 1-24 (1992). Any error is harmless, however, as the administrative law judge properly considered all of the evidence of record in making his findings on the merits. *See Shupink*, *supra*; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

interpretations is positive for the existence of pneumoconiosis. Director's Exhibit 47. The administrative law judge permissibly found that the weight of the x-ray evidence is negative for the existence of pneumoconiosis. Decision and Order at 3; *see Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *cf. Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). Therefore, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

There is no autopsy or biopsy evidence in the record in this case; thus, the existence of pneumoconiosis cannot be established pursuant to 20 C.F.R. §718.202(a)(2). Also, the existence of pneumoconiosis cannot be established pursuant to 20 C.F.R. §718.202(a)(3) inasmuch as there is no evidence of complicated pneumoconiosis in this living miner's claim filed after January 1, 1982, and claimant has not established fifteen or more years of coal mine employment. *See* 20 C.F.R. §§718.304, 718.305, 718.306(a).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinions of seven physicians. Director's Exhibits 15, 22, 26, 45, 47; Employer's Exhibits 15, 18-20, 23, 24. Noting that only Drs. Kanwal and Robinette diagnosed coal workers' pneumoconiosis, Director's Exhibits 22, 47, the administrative law judge permissibly accorded the most weight to the opinions of Drs. Robinette, Renn, and Dahhan based on their superior qualifications. Decision and Order at 4; Director's Exhibits 45, 47; Employer's Exhibits 18, 19; *see Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge then permissibly found that Dr. Robinette's opinion was outweighed by the opinions of Drs. Renn and Dahhan that there was no evidence of lung disease related to coal mine dust, because the latter opinions were well reasoned, based on the objective evidence of record, and supported by the consultative physicians of record. *See* Decision and Order at 4; Employer's Exhibits 18-20; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel*, *supra*; *see also Worhach v. Director, OWCP*, 17 BLR 1-105 (1993). Thus, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4). Further, as claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).[2]

[2]As the denial of benefits is affirmed, the Board need not address employer's and the Director's concerns regarding the responsible operator issue.

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

REGINA C. McGRANERY
Administrative Appeals Judge