BRB No. 99-1098 BLA

WILLIAM R. CLAY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
WHEELWRIGHT MINING, INC.	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Respondent	)	

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

William R. Clay, Jamestown, Kentucky, *pro se*.

Laura Metcoff Klaus (Arter & Hadden, LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant[1], without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (96-BLA-0066) of Administrative Law Judge Daniel J, Roketenetz on a duplicate 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 administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied the claim.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *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. 4,6921(b)(3), as incorporated by 30 U.S.C. 4,6932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer, in response, asserts that the administrative law judge's Decision and Order is supported by substantial evidence, and accordingly, it urges affirmance of the administrative law judge's denial of benefits. The

[1]Claimant is William R. Clay, the miner, who filed his original application for benefits with the Department of Labor (DOL) on April 17, 1987. Director's Exhibit 42. The claim was denied by DOL on October 6, 1987. *Id.* Claimant took no further action on this claim. Claimant then filed a second claim on February 9, 1993. Director's Exhibit 1.

Director, Office of Workers' Compensation Programs, (the Director), has filed a letter, indicating that he will not respond to the instant appeal.[2]

In order to establish entitlement to benefits in a living miner's claim, claimant must establish that the miner has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. Failure to prove any of these requisite elements of entitlement compels a denial of benefits. *See* 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)(*en banc*).

[2] We affirm, as unchallenged on appeal, and not adverse to claimant, the administrative law judge's findings that the evidence establishes 14 years of qualifying coal mine employment, that claimant's wife qualifies as a dependent for purposes of argumentation, and that employer is the putative responsible operator. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

With respect to the administrative law judge's finding at Section 718.202(a)(1), the administrative law judge correctly found that the record contains 13 interpretations of 6 x-ray films. Decision and Order at 7. He correctly found that twelve of the films were read as negative for pneumoconiosis, and that the April 12, 1993 reading by Dr. Potter, was the only interpretation read as positive for pneumoconiosis.[3] *Id;* Director's Exhibit 15. The administrative law judge discounted the 1971, 1977 and 1979 x-rays because they were significantly older than the other x-rays of record, Decision and Order at 7; Director's Exhibit 37, and correctly found that all of the remaining readers who interpreted x-rays as negative were B-readers, except Dr. Potter. The administrative law judge then rationally accorded more weight to the negative interpretations on the basis of the readers' superior qualifications, Decision and Order at 7; *See Woodward v. Director, OWCP,* 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149 (1989)(*en banc*); *Trent v. Director, OWCP*, 11 BLR 1-26(1987) and reasonably found that the preponderance of the evidence failed to establish the existence of pneumoconiosis. *See Slayton v. Pyro Mining* Co., 879 F.2d 187, 12 BLR 2-328 (6th Cir. 1989); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Sheckler v. Consolidation Coal Co.*, 7 BLR 1-128 (1984). We affirm, therefore, the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1).

Additionally, the administrative law judge correctly concluded that the record does not contain any biopsy evidence, pursuant to Section 718.202(a)(2), and that none of the presumptions contained in Section 718.202(a)(3) were applicable. *See* 20 C.F.R. §§718.304; 718.305, 718.306. Accordingly, we affirm the administrative law judge's findings thereunder.

With respect to the administrative law judge's finding at Section 718.202(a)(4), the administrative law judge correctly found that Drs. Potter, Director's Exhibit 10, Qaisi, Claimant's Exhibits 1, 2, 4, and Aaron, Claimant's

---

[3]It is obvious from the administrative law judge's findings that he made a mistake in writings: "[o]f the thirteen x-ray interpretations, twelve were read as negative for pneumoconiosis and one as negative." Decision and Order at 7. Clearly, one was read as positive.

Exhibit 1, opined that claimant suffers from pneumoconiosis, while Drs. Broudy, Director's Exhibits 37, 41, Fino, Employer's Exhibits 2, 10, 13, 14, and Branscomb, Employer's Exhibits 7, 11 opine that claimant does not have pneumoconiosis. Decision and Order at 12-13. The administrative law judge rationally accorded Dr. Potter's opinion little probative value because the positive x-ray he relied on was outweighed by the quality and quantity of the negative x-ray evidence and there was no additional documentation to support the physician's conclusions. Decision and Order at 7; *See Woodward, supra; Worhach, supra; Clark, supra.* Decision and Order at 13; *See McMath v. Director, OWCP, 12 BLR 1-6 (1988); Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985*; King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). In addition, the administrative law judge discounted Dr. Qaisi's opinion because although his pulmonary function studies and blood gas studies produced qualifying values, both Drs. Branscomb and Fino concluded that the results were not representative of claimant's usual pulmonary condition since claimant was suffering from pneumonia at the time the studies were administered, and Dr. Qaisi's report does not address this issue. Decision and Order at 13. Employer's Exhibits 10, 12, 15. The administrative law judge then properly discounted both the opinions of Drs. Qaisi and Aaron on the basis that their opinions were conclusory, *see Lucostic v. U.S. Steel Corp.,* 8 BLR 1-46 (1985); *Knizner v. Bethlehem Mines Corp*., 8 BLR 1-5 (1985); *see also Moseley v. Peabody Coal Co.*, 769 F. 2d 357, 8 BLR 2-22 (6th Cir. 1985), and devoid of objective evidence to support their conclusions. *See McMath, supra; Wetzel, supra; King, supra. Cochran v. Director, OWCP*, 16 BLR 1-101 (1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

The administrative law judge rationally credited Dr. Broudy's opinion that claimant does not have pneumoconiosis on the basis that it was better supported by the objective evidence of record, Decision and Order at 13; *Id,* and because he correctly noted that it was buttressed by the opinions of Drs. Fino and Branscomb. We affirm, therefore, the administrative law judge's finding that based upon a preponderance of the evidence, the record fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as it is supported by substantial evidence and is in accordance with applicable law. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, an award of benefits is precluded under Part 718 and we need not address the administrative law judge's findings regarding total disability. *See Trent*, *supra*; *Perry, supra.*

Accordingly, the administrative law judge's Decision and Order- Denial of Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge