

BRB No. 99-0943 BLA

DONALD L. JOHNSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AMAX 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 and the Decision on Request for Reconsideration of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Paul (Rick) Rauch (McNamar Fearnow & McSharar, P.C.), Indianapolis, Indiana, for claimant.

Amy E. Wilmot (Arter & Hadden LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order and the Decision on Request for Reconsideration (97-BLA-0672) of Administrative Law Judge Rudolf L. Jansen 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). In a Decision and Order dated February 1, 1999, the administrative law judge, based on the parties' stipulation, credited claimant with thirty-four years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Although the administrative law judge found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), the administrative law judge found the evidence insufficient to

establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. Subsequently, the administrative law judge denied claimant's request for reconsideration, rejecting claimant's assertion that he erred in weighing the conflicting x-ray evidence.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.<sup>1</sup>

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Inasmuch as claimant does not challenge the administrative law judge's finding that the evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); see also *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Accordingly, the administrative law judge's Decision and Order and Decision on Request for Reconsideration denying benefits are affirmed.

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<sup>1</sup>Claimant filed a brief in reply to employer's response brief, reiterating his prior assertions.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge