BRB No. 99-0671 BLA

MILDRED DEEL (Widow of JAMES DEEL)	)	
Claimant-Petitioner	)	
v.	)	
CLINCHFIELD 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 of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Mildred Deel, Clinchco, Virginia, *pro se*.[1]

Michael F. Blair (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

[1]Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. In a letter dated April 6, 1999, the Board stated that claimant would be considered to be representing herself on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant,[2] without the assistance of counsel, appeals the Decision and Order (98-BLA-0570) of Administrative Law Judge Edward Terhune Miller denying benefits on a survivor's 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). The administrative law judge credited the miner with twenty-four years of coal mine employment and adjudicated this survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. 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). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of survivor's benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[3]

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. *See McFall v. Jewell Ridge Coal Corp.*, 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. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on survivor's claims filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director,*

[2]Claimant is the widow of the miner, James Deel, who died on November 13, 1996. Director's Exhibits 1, 12. The record does not indicate that the miner filed a claim. Claimant filed her survivor's claim on March 21, 1997. Director's Exhibit 1.

[3]Inasmuch as the administrative law judge's length of coal mine employment finding, which is not adverse to this *pro se* claimant, is not challenged on appeal, we affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

OWCP, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. *Boyd*, *supra*.

The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Of the sixty-two x-ray interpretations of record, forty-six readings are negative for pneumoconiosis, Director's Exhibits 36, 53, 57-66, 82, 87, 88; Employer's Exhibit 2, six readings are positive, Director's Exhibits 36, 43, 46, 47, 50, 51, 52, and ten x-rays are unreadable, Director's Exhibits 37-42, 44, 45, 48, 49. In addition to noting the numerical superiority of the negative x-ray readings, the administrative law judge also considered the qualifications of the various physicians.[4] *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994). Thus, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).

[4]After noting that "there are 62 [x-ray] readings," the administrative law judge observed that "[o]f those [readings], only 6 are positive for pneumoconiosis." Decision and Order at 8. Moreover, the administrative law judge observed that "the majority of the B-readers interpreting each particular x-ray read that x-ray as negative for pneumoconiosis." *Id*.

Next, we affirm 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)(2) since there is no biopsy or autopsy evidence demonstrating the existence of pneumoconiosis.[5] Director's Exhibits 14-16. In addition, we affirm 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)(3) since none of the presumptions set forth therein is applicable to the instant claim. *See* 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption at 20 C.F.R. §718.305 because she filed her claim after January 1, 1982. *See* 20 C.F.R. §718.305(e); Director's Exhibit 68. Lastly, the presumption at 20 C.F.R. §718.306 is also inapplicable because the miner died after March 1, 1978.

[5]The administrative law judge correctly stated that "the biopsy evidence of record revealed the presence of only anthracotic pigmentation, not pneumoconiosis." Decision and Order at 8. Although Dr. Van Buren diagnosed anthracotic pigment disposition, Dr. Van Buren did not render an opinion that the miner's condition was related to coal mine employment. *See* 20 C.F.R. §718.202(a)(2); *Shoup v. Director, OWCP*, 11 BLR 1-110 (1987); Director's Exhibits 15, 16.

Finally, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Whereas Dr. Lyle opined that the miner suffered from pneumoconiosis, Director's Exhibit 25, Drs. Fino and Michos opined that the miner did not suffer from pneumoconiosis, Employer's Exhibits 1, 4. In a report dated April 26, 1997, Dr. Naeye opined that "findings of anthracosis are present" and stated that "[s]ince lymph nodes have been described as having black pigment without fibrosis, CWP is probably absent but not enough information is available to be sure about this postulate." Director's Exhibit 26. In a subsequent report, Dr. Naeye explained, "[i]n my [April 26, 1997] report I was referring to anthracosis in the medical not legal context." Director's Exhibit 81; *see Shoup v. Director, OWCP*, 11 BLR 1-110 (1987). Similarly, although Drs. Boggan and Bulle diagnosed chronic obstructive pulmonary disease and Dr. Rosser diagnosed chronic bronchitis, they did not render an opinion that the miner's condition was related to coal mine employment. *See Shoup, supra*; Director's Exhibits 17, 19, 24. Dr. Caffrey stated, "I cannot make a diagnosis of coal workers' pneumoconiosis or any other occupational pneumoconiosis." Director's Exhibit 81. The administrative law judge properly accorded greater weight to the opinions of Drs. Fino and Michos than to the contrary opinion of Dr. Lyle because he found their opinions to be better reasoned and documented.[6] See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). In addition, the administrative law judge properly accorded greater weight to the opinions of Drs. Fino and Michos because of their superior qualifications.[7] *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

[6]The administrative law judge stated that the opinions of Drs. Fino and Michos are "well-reasoned and supported by specific medical evidence." Decision and Order at 8. In contrast, the administrative law judge stated that "Dr. Lyle's opinions were conclusory." *Id*.

[7]The administrative law judge stated that "Dr. Lyle has not been shown to be [B]oard-certified in any medical specialty whereas the physicians of record who concluded that the miner did not have pneumoconiosis were [B]oard-certified in one or more relevant specialties." Decision and Order at 8. Dr. Fino is Board-certified in internal medicine and pulmonary disease. Director's Exhibit 88. Dr. Michos is Board-certified in internal medicine and Board-eligible in pulmonary disease. Employer's Exhibit 1. The record does not contain the credentials of Dr. Lyle.

In view of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement under 20 C.F.R. Part 718 in a survivor's claim, *see Trumbo, supra*; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986), we affirm the administrative law judge's denial of benefits.

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