

BRB No. 06-0732 BLA

JAMES F. HENDRIX)
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 Claimant-Petitioner)
)
 v.) DATE ISSUED: 03/19/2007
)
 DRUMMOND COMPANY,)
 INCORPORATED)
)
 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 Denying Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

James F. Hendrix, Carbon Hill, Alabama, *pro se*.

C. Andrew Kitchen (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (04-BLA-6502) of Administrative Law Judge Alice M. Craft rendered 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). Claimant filed his claim for benefits on July 7, 2003. Director's Exhibit 2. The administrative law judge credited claimant with 24.75 years of coal mine employment,¹ and found that claimant

¹ The record indicates that claimant's last coal mine employment occurred in Alabama. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of

failed to establish both the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), and that he is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202-718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge found that claimant did not establish the existence of pneumoconiosis by x-ray, because the only x-ray of record was interpreted as negative for pneumoconiosis. Substantial evidence supports this finding. Dr. Westerman, who lacks radiological qualifications, and Dr. Wheeler, a Board-certified radiologist and B reader,² both read the September 30, 2003 x-ray as negative for pneumoconiosis.³ Director's Exhibit 10; Employer's Exhibit 1. The

the United States Court of Appeals for the Eleventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

² The term "B reader" refers to a physician who has demonstrated designated levels of proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Safety and Health. *See* 42 C.F.R. §37.51. A "Board-certified radiologist" is a radiologist who is certified by the American Board of Radiology. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211, 213 n. 5 (1985).

³ Dr. Barrett, a Board-certified radiologist and B reader, reviewed the September 30, 2003 x-ray for its film quality only. Director's Exhibit 10.

record contains no other x-rays. Therefore, we affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Pursuant to 20 C.F.R. §718.202(a)(2),(3), the administrative law judge accurately determined that there were no biopsy or autopsy results to be considered, and that none of the presumptions listed at 20 C.F.R. §718.202(a)(3) was applicable in this living miner's claim filed after January 1, 1982, in which the record contained no evidence of complicated pneumoconiosis. We therefore affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2), (3).

Pursuant to Section 718.202(a)(4), the administrative law judge found that claimant did not establish the existence of pneumoconiosis by medical opinion evidence. Dr. Westerman, who is Board-certified in Internal Medicine and Pulmonary Disease, rendered the only medical opinion of record. After examining claimant, recording his smoking and coal mine employment histories, and performing a chest x-ray, pulmonary function study, and blood gas study, Dr. Westerman concluded that claimant "does not have evidence of pneumoconiosis," and he diagnosed claimant with chronic obstructive pulmonary disease (COPD), the etiology of which he stated was "unknown." Director's Exhibit 10 at 4, (supplemental report at 3). In a supplemental report detailing the results of the physical examination, Dr. Westerman commented that claimant "may have a dust related bronchitis with subsequent obstruction although his pulmonary function testing in 1998 demonstrated normal spirometry."⁴ Director's Exhibit 10 (supplemental report at 1, 3).

The administrative law judge correctly noted that claimant's COPD could "be encompassed within the definition of legal pneumoconiosis," if it arose out of coal mine employment. Decision and Order at 6; *see* 20 C.F.R. §718.201(a)(2). However, the administrative law judge found that Dr. Westerman's opinion was insufficient to establish the existence of legal pneumoconiosis, because Dr. Westerman opined that the etiology of claimant's COPD was "unknown." This finding was reasonable, and is supported by substantial evidence. *See* 20 C.F.R. §718.201(a)(2),(b); *McClendon v. Drummond Coal Co.*, 861 F.2d 1512, 1514, 12 BLR 2-108, 2-109 (11th Cir. 1988); *Stomps v. Director, OWCP*, 816 F.2d 1533, 1535, 10 BLR 2-107, 1-108 (11th Cir. 1987); Director's Exhibit 10. We therefore affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis by the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4).

⁴ The administrative law judge interpreted Dr. Westerman's comment as a statement that the doctor "thought it possible" the bronchitis with obstruction was "dust-related." Decision and Order at 5.

We have affirmed the administrative law judge's findings that claimant did not establish the existence of pneumoconiosis by any method available under 20 C.F.R. §718.202(a)(1)-(4). Because claimant did not establish the existence of pneumoconiosis, an essential element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits. *See Trent*, 11 BLR at 1-27.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge