BRB No. 98-0884 BLA

FRANK D. STURGEON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UNITED AFFILIATES CORPORATION, o/b/o TRIPLE T 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 Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Frank D. Sturgeon, Grundy, Virginia, *pro se.*

Ronald E. Gilbertson (Kilcullen, Wilson and Kilcullen, Chartered), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order (97-BLA-1420) of Administrative Law Judge Fletcher E. Campbell, Jr. 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). Claimant filed his claim in January 1997. Director's Exhibit 1. The administrative law judge, considering the claim pursuant to 20 C.F.R. Part 718, found that the evidence was insufficient to establish the

[1] Tim White, a benefits counselor with Stone Mountain Health Services in Vansant, Virginia, on behalf of claimant, requested an appeal of the administrative law judge's Decision and Order denying benefits, but Mr. White is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4). Further, the administrative law judge found the evidence was insufficient to establish total disability under 20 C.F.R. §718.204(c)(1)-(4), and also insufficient to establish total disability arising out of pneumoconiosis, *see* 20 C.F.R. §718.204(b). Accordingly, benefits were denied. On appeal, claimant contends generally that the administrative law judge erred in denying benefits. Employer has submitted a response brief advocating affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter stating that he will not respond to the present appeal unless specifically requested to do so by the Board.

In an appeal by a claimant proceeding without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is a contributing cause of a total respiratory disability. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Failure to prove any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

With respect to Section 718.202(a)(1), the administrative law judge correctly found that the record contains chest x-ray interpretations by four B readers of two x-ray films, and that none of these interpretations is positive for the existence of coal workers' pneumoconiosis.[2] Director's Exhibits 11, 12; Employer's Exhibits 1, 3. We, therefore, affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis as supported by substantial evidence.

[2] The record contains negative x-ray readings by Drs. Castle, Forehand, Cole and Templeton. Director's Exhibits 11, 12; Employer's Exhibits 1, 3. Dr. Castle made a "0/1" classification. Employer's Exhibit 3. This reading does not constitute evidence of pneumoconiosis. *See* 20 C.F.R. §718.102(b).

Inasmuch as the administrative law judge correctly found that no autopsy or biopsy reports were submitted in this case, we affirm the administrative law judge's finding that the existence of pneumoconiosis is not established under Section 718.202(a)(2) as supported by substantial evidence. Further, the administrative law judge properly found that the presumptions under 20 C.F.R. §718.202(a)(3) do not apply. Specifically, there is no evidence in the record of complicated pneumoconiosis, *see* 20 C.F.R. §718.304, the claim was filed after January 1, 1982, *see* Director's Exhibit 1; 20 C.F.R. §718.305(e), and this is not a death claim, *see* 20 C.F.R. §718.306. Therefore, we affirm the administrative law judge's finding that the existence of pneumoconiosis was not established at Section 718.202(a)(3).

With regard to Section 718.202(a)(4), the administrative law judge correctly found that both Dr. Castle and Dr. Forehand examined claimant and that both found no evidence of coal workers' pneumoconiosis. Director's Exhibit 8; Employer's Exhibit 3. The administrative law judge properly found that no physician of record diagnosed coal workers' pneumoconiosis. We, therefore, affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Since we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis, an essential element of entitlement, we must affirm the denial of benefits. *See Perry*, *supra*. We therefore decline to address the administrative law judge's findings regarding total disability as any errors therein would be harmless. *See Perry*, *supra*; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, we affirm the administrative law judge's Decision and Order denying benefits.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge