BRB No. 99-0854 BLA

GEORGE W. LAMBERT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
R.S. MINING, INCORPORATED	)	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 Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

George W. Lambert, Vansant, Virginia, *pro se*.

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

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (98-BLA-0818) of Administrative Law Judge Pamela Lakes Wood 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). The administrative law judge credited claimant with nine years of coal mine employment and found employer to be the responsible operator. Based on the filing date of the claim, the administrative law judge applied the regulations at 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally challenges the findings of the administrative law judge on the existence of pneumoconiosis. Employer responds, urging affirmance of the Decision and Order of the administrative law

judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond in this appeal.[1]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence.[2] *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *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. §921(b)(3), as incorporated 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 in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

[1] Employer has not challenged its designation as the responsible operator. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant, but is not representing him on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error. The administrative law judge rationally credited claimant with nine years of coal mine employment based on claimant's hearing testimony, employment statements, and Social Security records. *See Vickery v. Director, OWCP*, 8 BLR 1-430 (1986); *Niccoli v. Director, OWCP*, 6 BLR 1-910 (1984). We, therefore, affirm the administrative law judge's length of coal mine employment finding. The administrative law judge also properly found that the preponderance of the x-ray evidence interpreted by Board-certified Radiologists and B-readers was negative for pneumoconiosis and that claimant therefore failed to establish the existence of pneumoconiosis at Section 718.202(a)(1). *See* 20 C.F.R. §718.202(a)(1); *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Director's Exhibits 8A-13A, 28, 29; Employer's Exhibits 1, 3; Decision and Order at 5. The administrative law judge also correctly determined that since the record contained no biopsy or autopsy evidence, claimant did not establish the existence of pneumoconiosis at Section 718.202(a)(2), and that claimant, a living miner, was not entitled to the presumptions at Section 718.202(a)(3) as this claim was filed after January 1, 1982 and the record does not contain any evidence of complicated pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305(e), 718.306. At Section 718.202(a)(4), the administrative law judge properly found that the medical opinions of Drs. Fino and Iosif, who are Board-certified in internal medicine and pulmonary diseases, did not diagnose pneumoconiosis or any pulmonary/respiratory impairment related to coal mine employment. *See Perry, supra*. The administrative law judge also properly concluded that Dr. Sutherland did not relate his diagnoses of emphysema and acute bronchitis to claimant's coal mine employment and that his opinion was, therefore, insufficient to establish the existence of pneumoconiosis as defined by the Act. *See* 20 C.F.R. §§718.201, 718.202(a)(4); *Perry, supra*. Furthermore, the administrative law judge permissibly found Dr. Sutherland's diagnosis of clinical pneumoconiosis based on an unspecified profusion in an x-ray of an unspecified date too vague to constitute a reasoned medical opinion. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Finally, the administrative law judge rationally found that the well-documented and well-reasoned opinions of Drs. Fino and Iosif would outweigh Dr. Sutherland's opinion on the existence of clinical pneumoconiosis even if she had deemed this opinion to be sufficient to constitute a reasoned medical opinion.[3] *See Carson, supra*; *Fields*,

[3] The reports of Drs. Fino and Iosif were based on a physical examination, medical, smoking and working histories, and a non-qualifying pulmonary function study. Dr. Iosif also performed a blood gas study which was non-qualifying and an electrocardiogram which

supra; *Perry, supra*. We, therefore, affirm the finding of the administrative law judge that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4) and the denial of benefits as it is supported by substantial evidence and is in accordance with law.

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was normal. *See* Director's Exhibits 12, 13.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge