

BRB No. 99-0926 BLA

JEWELL R. CRUTCHFIELD)
(Widow of ESCO CRUTCHFIELD))
)
Claimant-Petitioner)
)
v.)
)
A & L ENTERPRISES/JORDAN)
BROTHERS COAL COMPANY)
)
and)
)
AMERICAN MINING INSURANCE)
COMPANY)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (1997-BLA-1517) of Administrative

¹Claimant is Jewell R. Crutchfield, the miner's widow. The miner, Esco

Law Judge Jeffrey Tureck denying benefits on claims 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 found that the parties stipulated that the miner established fourteen years of qualifying coal mine employment, that employer conceded that the miner was totally disabled, and, consequently, that the miner established a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge however found that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied on both the miner's and the survivor's claims. On appeal, claimant contends that the administrative law judge failed to provide reasons for his weighing of the evidence pursuant to Section 718.202(a). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, responds declining to submit a response brief on appeal.

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).

In order to establish entitlement pursuant to 20 C.F.R. Part 718 in the miner's claim, claimant must establish that the miner had pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis

Crutchfield, filed claims for benefits with the Social Security Administration on July 5, 1972 and with the Department of Labor on November 4, 1976. Director's Exhibits 63, 64. These claims were denied on July 20, 1979. Director's Exhibits 64. The miner filed a second claim on September 4, 1985 which was denied on January 29, 1986. Director's Exhibit 65. The miner filed the instant claim on April 22, 1991. Director's Exhibit 1. The miner died on September 5, 1993 and claimant filed a survivor's claim for benefits on October 4, 1993. Director's Exhibits 66, 69.

was totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements by a preponderance of the evidence compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In order to establish entitlement to benefits under Part 718 based on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that death was due to, or hastened by, pneumoconiosis. See 30 U.S.C. §901(a); 20 C.F.R. §§718.1, 718.205, 725.201; *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 135 (6th Cir. 1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Claimant contends that the administrative law judge's findings pursuant to Section 718.202(a) are in violation of the Administrative Procedure Act (APA), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and U.S.C. §932(a). Claimant's Brief at 2-4. We disagree. Contrary to claimant's contention, the administrative law judge addressed all of the evidence of record and provided reasons for his weighing of this evidence. Specifically, pursuant to Section 718.202(a)(1), the administrative law judge acted within his discretion in finding the preponderance of the x-ray interpretations submitted by the physicians with the highest qualifications were negative for the existence of pneumoconiosis. Decision and Order at 4; *Parulis v. Director, OWCP*, 15 BLR 1-28 (1991); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Pursuant to Section 718.202(a)(4), we reject claimant's contention that the administrative law judge did not provide adequate reasons for his weighing of the opinions of Drs. Fox, Swann, Hudson, Smiddy and Robinette. Claimant's Brief at 2-4. Initially, the administrative law judge acted within his discretion in finding Dr.

Fox's opinion, that the miner had pneumoconiosis, entitled to no weight because he did not explain his diagnosis and because his diagnosis was not supported by any objective data. Decision and Order at 5; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge also acted within his discretion in finding that the opinions of Drs. Swann, Hudson, Smiddy and Robinette, that the miner had pneumoconiosis, are not credible because they were based on positive x-rays when the overwhelming weight of the x-ray evidence is negative for the existence of pneumoconiosis and because Dr. Swann relied on erroneous smoking and coal mine employment histories, Drs. Hudson and Smiddy relied on an erroneous coal mine employment history and Dr. Smiddy did not discuss the results of a carboxyhemoglobin test which indicates that the miner was smoking at least a pack of cigarettes a day at the time of the test, and Dr. Robinette's opinion is speculative and not well-reasoned. Decision and Order at 5-6, 8; *Clark, supra*; *DeBusk v. Pittsburg & Midway Coal Co.*, 12 BLR 1-15 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984).

The administrative law judge further determined that the contrary opinions of Drs. Prince, Seargent, Morgan, Jarboe, Branscomb, Castle and Fino, stating that the miner did not have pneumoconiosis, are entitled to greater weight because their opinions are "convincing" and well-reasoned. Decision and Order at 8; *Clark, supra*. Inasmuch as the administrative law judge provided a rational basis for his weighing of all of the medical evidence of record, and because claimant has made no specific allegations of error regarding the reasons given by the administrative law judge for his weighing of the evidence, we reject claimant's contention of error and affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a).² As a result, we affirm the administrative law judge's denial of benefits on both the miner's and the survivor's claims.

²We affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2)-(3) inasmuch as the record contains no autopsy or biopsy evidence and the presumptions set forth at Section 718.202(a)(3) are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. See 20 C.F.R. §§718.202(a)(2), (3); 718.304, 718.305(e), 718.306; Decision and Order at 4, 8; Director's Exhibit 1.

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