

BRB No. 05-0116 BLA

JAMES E. ELDRIDGE)
)
 Claimant-Petitioner)
)
 v.)
)
 ADENA FUELS, INCORPORATED) DATE ISSUED: 05/24/2005
)
 and)
)
 KENTUCKY COAL PRODUCERS)
 SELF-INSURANCE FUND)
)
 Employer/Carrier-Respondent)
) DECISION and ORDER
 DIRECTOR, OFFICE OF WORKERS'
 COMPENSATION PROGRAMS, UNITED
 STATES DEPARTMENT OF LABOR

Party-in-Interest

Appeal of the Decision and Order – Denying Benefits of Rudolf L. Jansen,
Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

David H. Neeley (Neeley & Reynolds, P.S.C.), Prestonsburg, Kentucky for
employer.

Rita A. Roppolo (Howard M. Radzely, Solicitor of Labor; Donald S. Shire,
Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor;
Michael J. Rutledge, Counsel for Administrative Litigation and Legal
Advice), Washington, D.C., for the Director, Office of Workers'
Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY and HALL, Administrative Appeals
Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5859) of Administrative Law Judge Rudolf L. Jansen 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 the instant claim on May 15, 2001. Director’s Exhibit 2. The district director issued a Proposed Decision and Order Denying Benefits on January 15, 2003. Director’s Exhibit 29. Claimant requested a hearing, which was held on December 3, 2003. The administrative law judge found that while claimant worked for at least fourteen years in coal mine employment, he failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), or that he was totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

Claimant appeals, arguing that the administrative law judge erred in evaluating the x-ray evidence. Claimant’s Brief at 2-3. Claimant also asserts the Director, Office of Workers’ Compensation Programs, (the Director) failed to provide him with a credible pulmonary evaluation as required by 20 C.F.R. §725.406(a). Claimant’s Brief at 4. Additionally, claimant challenges the administrative law judge’s finding that he is not totally disabled by a respiratory or pulmonary impairment. Claimant’s Brief at 4-6. Employer responds, urging affirmance of the denial of benefits. The Director takes no position on the ultimate issue of entitlement, but responds, arguing that claimant received a complete pulmonary evaluation as contemplated by Section 725.406(a). Director’s Brief at 2.

The Board’s scope of review is defined by statute. The administrative law judge’s Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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 under Part 718 in a living miner’s claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that he or she is totally disabled due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove 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*).

In this case, the administrative law judge properly denied benefits because he found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Specifically, there is no merit to claimant’s contention that the administrative law judge selectively analyzed the x-ray evidence at 20 C.F.R. §718.202(a)(1). The administrative law judge correctly considered four readings of three x-rays dated October 3, 2001, August 9, 2001, and December 28, 1998, of which there

was one quality reading and three negative readings for the existence of pneumoconiosis. Director's Exhibits 15, 16, 22, 23; Decision and Order at 9. Consequently, because there was no positive x-ray evidence of record to establish that claimant suffered from pneumoconiosis, we affirm as supported by substantial evidence, the administrative law judge's finding at 20 C.F.R. §718.202(a)(1).¹ Decision and Order at 9. Furthermore, with respect to the two medical opinions of record, the administrative law judge properly noted that neither Dr. Hussain nor Dr. Westerfield diagnosed that claimant suffered from clinical or legal pneumoconiosis. Director's Exhibits 12, 23; Decision and Order at 10. We therefore affirm as supported by substantial evidence, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 10; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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).

Additionally, we reject claimant's assertion that, insofar as the administrative law judge characterized Dr. Hussain's opinion as "conclusory," he is entitled to have the denial of benefits vacated, and the case remanded for the Director to provide him with a new pulmonary evaluation pursuant to 20 C.F.R. §725.406.² Although the administrative law judge observed that Dr. Hussain did not fully address the basis for his diagnosis that claimant's chronic obstructive pulmonary disease (copd) was due to smoking, the administrative law judge did not reject Dr. Hussain's opinion on the grounds that it was not a credible opinion or that it did not address all elements of entitlement. Rather, the administrative law judge found only that Dr. Hussain's opinion was entitled to less weight when compared to the better reasoned and documented opinion of Dr. Westerfield that claimant had no respiratory or pulmonary condition whatsoever. Director's Exhibit

¹ Because there was no biopsy evidence of record, the administrative law judge found that claimant was unable to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2). Decision and Order at 9. He also determined that claimant was not eligible for any of the available presumptions for establishing the existence of pneumoconiosis as presented at 20 C.F.R. §718.202(a)(3), that claimant was unable to avail himself of any of presumptions for establishing the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3). Decision and Order at 9-10. The administrative law judge's findings with respect to Sections 718.202(a)(2), (3) are affirmed as they are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² The Department of Labor has a statutory duty to provide a miner with a complete, credible pulmonary examination sufficient to constitute an opportunity to substantiate the claim. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 184 (1994).

23; Decision and Order at 10. Contrary to claimant's contention, the Director's obligation to provide claimant with a complete pulmonary evaluation is not tantamount to an obligation to provide claimant with an examining physician's opinion that is supportive of claimant's case. Director's Exhibit 23; Decision and Order at 10; *see Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990) (DOL has not fulfilled its statutory duty of providing a complete pulmonary evaluation if the record contains no credible medical opinion addressing a necessary element of entitlement). In this case, claimant is not entitled to a new pulmonary examination simply because Dr. Hussain did not diagnose the presence of clinical or legal pneumoconiosis, or otherwise provide an opinion satisfactory to claimant's position. Dr. Hussain did address the necessary element of whether claimant had pneumoconiosis when he found that claimant's chronic obstructive pulmonary disease was due to smoking. Director's Exhibit 23. Because the administrative law judge considered Dr. Hussain to be a credible physician who offered an opinion on the requisite elements of entitlement in claimant's case, we find no basis for remanding the case for a new pulmonary evaluation. *See Cline*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105. We therefore hold that the Director satisfied his obligation under the Act to provide claimant with a complete and credible pulmonary evaluation. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 184 (1994).

Because claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a requisite element of entitlement, benefits are precluded. *See Trent*, 11 BLR at 1-26; *Perry*, 9 BLR at 1-1. We therefore affirm as supported by substantial evidence the administrative law judge's denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge