BRB No. 97-1535 BLA

ROBY BOWMAN)
)
Claimant-Petitioner)
)
v.)
)
BOWMAN COAL, INCORPORATED)
)
and)
)
VIRGINIA PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION) DATE ISSUED:
)
Employer/Carrier-Respondents)
)
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Roby Bowman, Vansant, Virginia, *pro se.*[1]

Michael F. Blair (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-1079) of Administrative Law Judge Lee J. Romero, 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). The administrative law judge, based

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[1]Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

on the parties' stipulation, credited claimant with at least sixteen years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

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

After consideration of the Decision and Order and the relevant evidence of record, we conclude that the administrative law judge's decision is supported by substantial evidence and contains no reversible error and, therefore, it is affirmed. In finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), the administrative law judge considered the x-ray evidence of record which consists of twenty-three interpretations of six x-rays. Director's Exhibits 15-17, 40, 45, 49-52, 54, 58; Employer's Exhibits 2-5. The administrative law judge stated that "[o]nly one reading, by Dr. D.R. Patel of the x-ray taken on [September 11, 1987], could even be considered a positive reading."[2] Decision and Order at 5. The administrative law judge properly accorded greater weight to the negative x-ray readings provided by physicians with superior qualifications.[3] *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Thus, substantial evidence supports the

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[2]The administrative law judge observed that Dr. Patel "noted 'density in the left base suggestive of pneumonic process.'" Decision and Order at 5. Although the administrative law judge stated that Dr. Patel provided a "questionably positive x-ray," Decision and Order at 6, Dr. Patel did not provide a positive x-ray reading in accordance with the ILO classification system, *see* 20 C.F.R. §718.102.

[3]The administrative law judge stated that "[t]wenty-one of the readings were performed by 'B' readers, and all of those were negative for pneumoconiosis." Decision and Order at 5. Further, the administrative law judge stated that he accorded "more weight to duly qualified B-readers who are also [B]oard-certified radiologists." *Id.* at 6. The record does not contain the credentials of Dr. Patel.

administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994).

Further, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) since the record does not contain any biopsy results demonstrating the presence of pneumoconiosis. Additionally, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. *See* 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption at 20 C.F.R. §718.305 because he filed his claim after January 1, 1982. *See* 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim; therefore, the presumption at 20 C.F.R. §718.306 is also inapplicable.

Next, in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge considered the relevant medical opinions of Drs. Branscomb, Castle, Forehand and Thakkar. Drs. Branscomb and Castle opined that claimant does not suffer from pneumoconiosis. Director's Exhibit 50; Employer's Exhibit 1. Additionally, Dr. Forehand opined that claimant does not suffer from a cardiopulmonary disease. Director's Exhibit 13. Finally, although Dr. Thakkar opined that claimant suffers from a chronic obstructive pulmonary disease, Dr. Thakkar did not specifically indicate the cause of claimant's condition. Director's Exhibit 58. The administrative law judge properly found that none of these physicians diagnosed pneumoconiosis or any chronic lung disease arising out of coal mine employment. 20 C.F.R. §718.201; *see Shoup v. Director, OWCP*, 11 BLR 1-110 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). We, therefore, affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718.[4] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry, supra*.

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[4]In view of our disposition of this case at 20 C.F.R. §718.202(a), we decline to address the administrative law judge's finding at 20 C.F.R. §718.204.

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