BRB No. 00-0233 BLA

JEFF THOMAS, JR.)
)
Claimant-Petitioner)
)
v.) DATE ISSUED:
)
CLINCHFIELD COAL COMPANY)
)
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 John C. Holmes, Administrative Law Judge, United States Department of Labor.

Jeff Thomas, Jr., Wise, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of legal counsel, appeals the Decision and Order (1999-BLA-924) of Administrative Law Judge John C. Holmes 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 noted that claimant alleged twelve and one-half years of coal mine employment and adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718. The administrative law judge

[1] Claimant filed his initial claim for benefits on May 8, 1984, which was denied in a Decision and Order issued January 22, 1988, by Administrative Law Judge Henry W. Sayrs based on claimant's failure to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order at 1; Director's Exhibit 36-25. Claimant appealed the denial of benefits to the Board and in *Thomas v. Clinchfield Coal Co.*, BRB No. 88-0525 BLA (April 19, 1991)(unpub.), the Board

considered all of the evidence submitted subsequent to the previous denial and found that the evidence was 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 contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

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. *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, are supported by substantial evidence, and are 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 establish 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 of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

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 contained therein. In his consideration of the evidence pursuant to Section 718.202(a)(1), the administrative law judge discussed the twenty-six x-ray readings of eight x-rays dated May 1, 1997, May 5, 1997, October 29, 1997, February 11, 1998, April 16, 1998, June 23, 1998, June 23, 1999 and July 7, 1999, as well as the qualifications of the readers. Decision and Order at 1-2; Director's Exhibits 10-11, 22-25; Employer's Exhibits 1-11, 15. The administrative law judge correctly found that all of the x-ray readings were negative for the presence of pneumoconiosis, except Dr. Smiddy's. Decision and Order at 2. The administrative law judge assigned diminished weight to the June 23, 1998, x-ray interpretation by Dr.

---

affirmed the denial of benefits. Decision and Order at 1; Director's Exhibit 36-26. No further action was taken on that claim. *Id.* The instant claim was filed on September 22, 1997. Decision and Order at 1; Director's Exhibit 1.

Smiddy since the doctor's "credentials were not listed," the x-ray was "not contained on an ILO form," did not state a familiar diagnosis of pneumoconiosis and was reread as negative by Drs. Wheeler and Scott, dually qualified B readers and Board certified radiologists, and Dr. Dahhan, a B reader. Decision and Order at 2; Director's Exhibit 31, 35; Employer's Exhibits 1-2. The administrative law judge thus reasonably found that the clear preponderance of the x-ray interpretations by the readers with superior qualifications was negative. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc)*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 2. We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by substantial evidence.

Further, the administrative law judge properly concluded that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) as there was no biopsy evidence in the record. *See* 20 C.F.R. §718.202(a)(2); Decision and Order at 2. In addition, the presumptions enumerated at Section 718.202(a)(3) are inapplicable to this claim as the record contains no evidence of complicated pneumoconiosis, *see* 20 C.F.R. §718.304; claimant filed his claim after January 1, 1982, *see* 20 C.F.R. §718.305; and this is not a survivor's claim. *See* 20 C.F.R. §718.306.

In weighing the medical opinions of record, the administrative law judge also rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). *Perry*, *supra*. In so finding, the administrative law judge acted within his discretion as fact-finder in concluding that the opinion of Dr. Smiddy, stating that claimant suffered from bronchitis, failed to establish the existence of pneumoconiosis since he did not relate the condition to coal mine employment. *See Shaffer v. Consolidation Coal Co.*, 17 BLR 1-56 (1992); *Biggs v. Consolidation Coal Co.*, 8 BLR 1-317 (1987). Moreover, the administrative law judge rationally found that the contrary medical opinions of Drs. Fino and McSharry, who concluded that claimant did not have pneumoconiosis or an impairment related to coal mine employment, were well reasoned and well documented. *Clark*, *supra*; *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); Decision and Order at 2; Director's Exhibit 14;

---

[2] A chest x-ray must be classified as Category 1, 2, 3, A, B or C, according to the International Labour Organization (ILO) to establish the existence of pneumoconiosis. 20 C.F.R. §718.102(b).

Employer's Exhibits 8, 14. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that the newly submitted medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Anderson*, *supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). Inasmuch as claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a), the evidence is insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 and we affirm the denial of benefits as it is supported by substantial evidence and is in accordance with law. *See Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied*, 519 U.S. 1090 (1997); *Caudill v. Arch of Kentucky, Inc.*, 22 BLR 1- , BRB No. 98-1502 BLA (Sept. 28, 2000)(*en banc*).

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge