

BRB No. 01-0350 BLA

IRENE E. FLANNIGAN)
(o/b/o WILLIAM E. FLANNIGAN))
)
 Claimant-Petitioner)

v.)

U.S. STEEL MINING COMPANY)

Employer-Respondent)

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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Irene E. Flannigan, Mount Pleasant, Pennsylvania, *pro se*.

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

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order (00-BLA- 0719) of Administrative Law Judge Daniel L. Leland 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).² Based on the filing date of February

¹ Claimant, Irene E. Flannigan, the widow of the miner, is pursuing his claim filed on February 17, 1999. Director's Exhibit 1. The miner died on August 14, 2000. Claimant's Exhibit 4, Hearing Transcript at 11, 13.

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20

17, 1999, the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718. The administrative law judge found the evidence of record sufficient to demonstrate the presence of a totally disabling respiratory impairment, but insufficient to establish the existence of pneumoconiosis or that the miner was disabled due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant challenges generally the findings of the administrative law judge with respect to the existence of pneumoconiosis. Neither employer nor the Director, Office of Workers' Compensation Programs (the Director), has responded to 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge*

C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001).

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).

In order to establish entitlement to benefits on a miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was 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*).

After careful consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's Decision and Order denying benefits is supported by substantial evidence and in accordance with law. In finding that the x-ray evidence did not establish the existence of pneumoconiosis, the administrative law judge correctly determined that all of the x-ray readings of record were negative. Decision and Order at 3. We, therefore, affirm the administrative law judge's finding that the x-ray evidence cannot establish the existence of pneumoconiosis. 20 C.F.R. §718.202(a)(1). Further, because the administrative law judge correctly found that there was no evidence of record sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) and (3), Decision and Order at 5, that finding is also affirmed.

Turning to the medical opinion evidence, the administrative law judge correctly found that Drs. Gress and Hunter diagnosed the existence of coal workers' pneumoconiosis, while Drs. Kucera and Fino concluded that the miner did not have pneumoconiosis and that his pulmonary impairment was due exclusively to his cigarette smoking habit. The administrative law judge rejected Dr. Gress's medical report as unreasoned because the doctor had relied exclusively on the miner's coal mine employment history in order to diagnose the existence of pneumoconiosis. See Claimant's Exhibit 3 at 37-38. The administrative law judge further found that Dr. Hunter's opinion was unreasoned because it offered no basis for finding that the miner had pneumoconiosis. Claimant's Exhibit 5. The administrative law judge acknowledged that Dr. Kucera did not provide a rationale for his failure to diagnose a coal mine dust related lung disease, but found that Dr. Fino had provided a number of compelling reasons for his determination that the miner's pulmonary impairment was caused exclusively by his long cigarette smoking history. See Director's Exhibits 37, 26. The administrative law judge also stated that it was noteworthy that Dr. Juriga did not mention pneumoconiosis on the miner's death certificate. Claimant's Exhibit 4; Decision and Order at 6. Based on this evidence, along with the negative x-ray evidence, the administrative law judge determined that the miner failed to establish the existence of pneumoconiosis. This was rational. See *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997); *Lango v. Director, OWCP*, 104 F.3d 673, 21 BLR 2-12 (3d Cir. 1997); *Milburn Colliery Coal Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *York v. Jewell Ridge Coal Co.*, 7 BLR 1-766 (1985); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *Cosalter v. Mathies Coal Co.*, 6 BLR 1-1182 (1984); *Rinkes v. Consolidation Coal Co.*, 6 BLR 1-826 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge