

BRB No. 05-0464 BLA

GEORGE COLLINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MOUNTAIN CLAY, INCORPORATED)	DATE ISSUED: 11/30/2005
)	
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 of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-5862) of Administrative Law Judge Joseph E. Kane 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). After crediting claimant with at least thirty-one years of coal mine employment, 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 total disability pursuant to 20 C.F.R. §718.204(b)(i)-(iv). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to

20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also argues that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a).¹ The record consists of four interpretations of two x-rays, dated March 22, 2002 and October 4, 2002. Each of the four x-ray interpretations is negative for pneumoconiosis. Director's Exhibits 11, 22; Employer's Exhibits 2, 4. Because the record does not contain any positive x-ray interpretations, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).²

Regarding Section 718.202(a)(4), the administrative law judge considered the reports of Drs. Baker,³ Broudy,⁴ and Fino.⁵ The administrative law judge correctly stated

¹Because no party challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

²Claimant generally suggests that the administrative law judge may have selectively analyzed the x-ray evidence. Claimant provides no support for his contention, however, and the Decision and Order reflects that the administrative law judge properly considered all of the x-ray evidence, as discussed *supra*, without engaging in a selective analysis. Decision and Order at 6-7. Thus, we reject claimant's suggestion.

³Dr. Baker opined that claimant does not suffer from an occupational lung disease related to coal dust exposure. Director's Exhibit 11.

⁴Dr. Broudy opined that claimant does not suffer from coal workers' pneumoconiosis or silicosis. Employer's Exhibit 4. Dr. Broudy also opined that claimant does not suffer from any chronic lung disease caused by the inhalation of coal mine dust.

that “[n]one of the physicians who examined [c]laimant or who provided consultative reports diagnosed the [c]laimant with any respiratory impairments including pneumoconiosis.” Decision and Order at 7. Because there is no medical opinion evidence that supports a diagnosis of pneumoconiosis, we affirm the administrative law judge’s finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge’s finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement, we affirm the administrative law judge’s denial of benefits under 20 C.F.R. Part 718. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant’s contentions regarding the administrative law judge’s finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Id. Dr. Broudy further opined that claimant does not suffer from an occupational lung disease that has arisen from his coal mine employment. Employer’s Exhibit 12.

⁵Dr. Fino opined that claimant does not suffer from coal workers’ pneumoconiosis. Employer’s Exhibit 6. Dr. Fino also opined that claimant does not suffer from legal or medical pneumoconiosis. Employer’s Exhibit 11.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge