**U.S. Department of Labor**

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 17-0092 BLA

| | | |
|---|---|---|
| RICKY J. OWENS | ) | |
| | ) | |
| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| RAINTREE COAL COMPANY | ) | |
| | ) | DATE ISSUED: 11/28/2017 |
| 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 Larry W. Price, Administrative Law Judge, United States Department of Labor.

Ricky J. Owens, Haysi, Virginia.

Matthew Moynihan (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] the Decision and Order Denying Benefits (2014-BLA-05678) of Administrative Law Judge Larry W. Price

[1] Cindy Viers, a benefits counselor with Stone Mountain Health Services of Oakwood, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Viers is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

rendered on a claim filed on June 4, 2013, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

The administrative law judge credited claimant with 10.93 years of coal mine employment and thus found that claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] Considering whether claimant could establish entitlement without the benefit of the Section 411(c)(4) presumption, the administrative law judge found that claimant established the existence of clinical pneumoconiosis arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b).[3] Claimant failed to establish the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §§718.202(a)(3), 718.304, however, or legal pneumoconiosis,[4] pursuant to 20 C.F.R. §718.202(a)(4). Finally, the administrative law judge found that while claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2), he failed to establish that pneumoconiosis is a substantially contributing cause of his total disability, pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance, and the Director, Office of Workers' Compensation Programs, did not file a brief 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. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989).

---

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[4] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

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 applicable law.[5] 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).

**The Section 411(c)(4) Presumption - Length of Coal Mine Employment**

Because it is relevant to whether claimant can invoke the Section 411(c)(4) presumption, we initially review the administrative law judge's finding that claimant worked 10.93 years in coal mine employment.

Claimant bears the burden of proof in establishing the length of his coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985); *Shelesky v. Director, OWCP*, 7 BLR 1-34 (1984). The Board will uphold the administrative law judge's determination if it is based on a reasonable method of calculation and is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The administrative law judge considered claimant's testimony, the employment history form provided with his claim, affidavits from two of his coworkers, and his Social Security Administration (SSA) earnings records. Decision and Order at 2-3, 9-11; Hearing Tr. at 10-15; Director's Exhibits 3, 5; Claimant's Exhibits 7, 8. Claimant estimated that he worked in the coal mining industry for twenty years, ending on February 22, 1995 when he was injured in a mining accident. Hearing Tr. at 10, 14; Director's Exhibits 2, 3, 5. Claimant stated that he worked mostly as an underground miner, but also worked for two years sampling coal as a lab technician, in 1977 and 1978, and worked for one year spraying antifreeze on coal as it was loaded into railroad cars, in 1989. Decision and Order at 2; Hearing Tr. at 11-14, 23-25.

With respect to claimant's underground employment, the administrative law judge considered that the SSA earnings records reflect variable annual earnings in every year from 1978 to 1995, with the exception of 1987 and 1993 when claimant had no reported earnings at all.[6] Decision and Order at 10; Director's Exhibit 5. Further, the

[5] Because the record reflects that claimant's coal mine employment was in West Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5 at 4; Hearing Tr. at 13, 18.

[6] Claimant's reported earnings vary from $2,940.00 to $25,195.00 per year. The Social Security Administration earnings records do not list claimant's quarterly earnings. Director's Exhibit 5.

administrative law judge noted claimant's testimony that he was laid off and collected unemployment for a time, but could not recall how long he was off between jobs. Decision and Order at 8; Hearing Tr. at 15. Based on this evidence, the administrative law judge concluded that it was clear that claimant worked less than a full year for several years of his reported employment. Decision and Order at 10. The administrative law judge correctly noted that where the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, it is permissible to use the formula provided by 20 C.F.R. §725.101(a)(32)(iii).[7] Decision and Order at 9; *see* 20 C.F.R. §725.101(a)(32)(iii); *Osborne v. Eagle Coal Co.*, BRB No. 15-0275 BLA, slip op. at 8 (Oct. 5, 2016) (pub.). Thus, based on claimant's reported earnings, the administrative law judge calculated the length of claimant's coal mine employment for each year from 1978 through 1995, to credit claimant with 10.93 years in underground coal mine employment.[8] Decision and Order at 10.

The administrative law judge also considered claimant's employment in 1977 and 1978 as a lab technician preparing coal samples and found that this did not constitute coal mine employment because the work was performed in town and not at a mine site. Decision and Order at 9. He also found that claimant's work in 1989 spraying coal as it was loaded for shipping did not constitute coal mine work, because the coal had already been purchased and had entered the stream of commence. *Id.* Finally, the administrative law judge noted that even if he had included this additional work, based on claimant's

---

[7] The regulation at 20 C.F.R. §725.101(a)(32)(iii) provides, in pertinent part:

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

20 C.F.R. §725.101(a)(32)(iii).

[8] In this case, the administrative law judge calculated claimant's length of employment using the average *annual* earnings by year for miners who spent 125 days at a mine site, rather than the *daily* average earnings by year, as specified at 20 C.F.R. §725.101(a)(32)(iii). Decision and Order at 10. We note, however, that the evidence of record is insufficient to establish the requisite fifteen years of qualifying coal mine employment using either method of calculation. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

earnings, claimant would only have been credited with an additional 2.65 years, for a total of 13.58 years.[9] Decision and Order at 10 n.6. Because it is supported by substantial evidence, we affirm the administrative law judge's findings that claimant failed to establish the requisite fifteen years of qualifying coal mine employment. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08, 22 BLR 2-162, 2-168 (4th Cir. 2000). Therefore, we affirm the administrative law judge's finding that claimant is unable to invoke the rebuttable presumption at Section 411(c)(4), 30 U.S.C. §921(c)(4).

**Entitlement Under 20 C.F.R. Part 718**

Without the benefit of the Section 411(c)(4) presumption, claimant has the burden to establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP,* 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

[9] We note that under the Act, a "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal." 30 U.S.C. §902(d); *see* 20 C.F.R. §§725.101(a)(19), 725.202(a). Thus, to the extent the administrative law judge failed to analyze whether claimant's work as a laboratory technician processing coal samples, or spraying coal while it loaded into railroad cars, constituted coal preparation and, thus, was the work of a miner, this was error. *See Amigo Smokeless Coal Co. v. Director, OWCP*, 642 F.2d 68, 69-71, 2 BLR 2-68, 2-73 (4th Cir. 1981), *aff'g sub. nom. Bower v. Amigo Smokeless Coal Co.*, 2 BLR 1-729, 1-738 (1979) (a laboratory technician collecting coal samples for processing and analysis is performing a function that is integral and necessary to the preparation of coal); *Hanna v. Director, OWCP*, 860 F.2d 88, 93, 12 BLR 2-15, 2-23 (3d Cir. 1988) (loading coal is the final step of the preparation of coal); *Director, OWCP v. Ziegler Coal Co.* [*Wheeler*], 853 F.2d 529, 536 (7th Cir. 1988) (the proper inquiry is whether the facility was used in the preparation of coal, not its distance from the mine site); *Ratliff v. Chessie System Railroad*, No. 93-3535, 1994 WL 376891 (6th Cir. July 18, 1994) (coal entered the stream of commerce after it was loaded). These errors were harmless, however, given the administrative law judge's alternative finding that, even if counted, claimant would not have sufficient coal mine employment to invoke the Section 411(c)(4) presumption. *See Larioni*, 6 BLR at 1-1278; Decision and Order at 10 n.6.

**Complicated Pneumoconiosis**

Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether claimant has established invocation of the irrebuttable presumption, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc). In this case, the administrative law judge considered x-ray evidence, pursuant to 20 C.F.R. §718.304(a), and medical opinion evidence and medical treatment notes, pursuant to 20 C.F.R. §718.304(c).[10]

Dr. Miller, a dually-qualified Board-certified radiologist and B reader, interpreted a January 17, 2014 x-ray as positive for simple pneumoconiosis and complicated pneumoconiosis, Category A. Claimant's Exhibit 2. The administrative law judge correctly noted, however, that this x-ray reading is the only evidence in the record suggestive of complicated pneumoconiosis. Decision and Order at 12-13. Dr. Adcock, who is also dually-qualified, read this same x-ray as negative for pneumoconiosis, all of the other x-rays show, at most, small opacities of simple pneumoconiosis, and none of the medical opinions or treatment notes contains a diagnosis of complicated pneumoconiosis. Decision and Order at 13; Director's Exhibit 12; Employer's Exhibits 3-9, 11, 14-20. Thus, the administrative law judge permissibly found that the weight of the medical evidence does not establish complicated pneumoconiosis, and that claimant did not invoke the irrebuttable presumption at 20 C.F.R. §718.304. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); Decision and Order at 13.

[10] There is no biopsy evidence in the record, pursuant to 20 C.F.R. §718.304(b). Decision and Order at 12.

**Legal Pneumoconiosis**

Next, the administrative law judge found that the medical opinion evidence does not establish that claimant suffers from legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[11] The administrative law judge first determined that claimant has a seventy-six pack-year smoking history. Decision and Order at 8. As substantial evidence supports that finding, it is affirmed.[12] *See Compton*, 211 F.3d at 207-08, 22 BLR at 2-168.

The administrative law judge then considered the medical opinions of Dr. Habre, McSharry, and Sargent, together with claimant's medical treatment records. The administrative law judge correctly found that, while all of the physicians diagnosed severe chronic obstructive pulmonary disease (COPD), only Dr. Habre diagnosed legal pneumoconiosis.[13] The administrative law judge discredited Dr. Habre's opinion as

[11] Employer concedes that claimant established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Employer's Post-hearing Brief at 9; Employer's Brief at 8-9. Establishing the existence of clinical pneumoconiosis satisfies claimant's burden to establish the existence of the disease. *See* 20 C.F.R. §718.202(a). Nevertheless, we will address the administrative law judge's finding that claimant failed to establish legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) because it is relevant to his finding that claimant failed to establish total disability due to pneumoconiosis, at 20 C.F.R. §718.204(c).

[12] The administrative law judge noted that claimant's hearing testimony, that he smoked approximately one to two packs a day for thirty-two years, or up to sixty-four pack-years, quitting in 2011, conflicted with the smoking histories recorded in his medical treatment records. Decision and Order at 2, 8; Hearing Tr. at 20-21, 28. Drs. Patel and Mitchell, and a physician at Pulmonary Associates of Kingsport all recorded, on multiple occasions, that claimant smoked two to three packs a day, until 2010, and continued at a reduced rate through 2012. Decision and Order at 8; Employer's Exhibits 3-9, 11, 15-17, 19-20. Permissibly according greater weight to the consistent histories contained in the treatment records, the administrative law judge determined that claimant smoked two and one-half packs daily from 1979-2009, and one-third of a pack daily from 2010 through 2012, for a total smoking history of seventy-six pack-years. *See Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803-04, 21 BLR 2-302, 2-310-12 (4th Cir. 1998); Decision and Order at 8.

[13] The administrative law judge correctly noted that Drs. McSharry and Sargent opined that claimant suffers from a disabling chronic obstructive pulmonary disease (COPD)/emphysema due to cigarette smoke and unrelated to coal mine dust exposure. Decision and Order at 6, 7; Employer's Exhibits 1, 2, 2A. The administrative law judge

inadequately reasoned, however, and found that claimant failed to establish the existence of legal pneumoconiosis.

Dr. Habre diagnosed legal pneumoconiosis, in the form of severe COPD/chronic bronchitis, due to both coal dust exposure and smoking. Decision and Order at 5 & n.2, 6, 16; Director's Exhibit 9; *see also* Employer's Exhibit 22 at 10-14, 28-29. The administrative law judge noted that, in his written reports, Dr. Habre relied on a sixty-two pack-year cigarette smoking history. He opined that while cigarette smoke exposure was a major and substantial cause of claimant's COPD/chronic bronchitis, claimant's coal mine dust exposure played an additive and significant role. Director's Exhibit 9. Dr. Habre stated that smoking and coal dust exposure "similarly, but independently . . . will lead to the presence of bronchospasm and airway inflammation" and that there was a "correlation" between coal mine dust, the decline in "spirometric parameter" and the presence of legal pneumoconiosis. Director's Exhibit 9. The administrative law judge permissibly found Dr. Habre's opinion unpersuasive, however, because he relied on the general correlation between coal mine dust and the decline in spirometric parameter rather than addressing claimant's specific case. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103-04 (7th Cir. 2008); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 16.

The administrative law judge further found that Dr. Habre's opinion was undermined by his deposition testimony. Decision and Order at 16. Dr. Habre testified that smoking alone could have caused claimant's COPD, and that given claimant's age and advanced disease, other factors such as Alpha 1 antitrypsin deficiency should also be considered as possible causes. Decision and Order at 16; Employer's Exhibit 22 at 23, 25-28. Moreover, as the administrative law judge observed, when told that claimant's treating physicians recorded smoking histories of two to three packs a day, or eighty to ninety-nine pack-years, Dr. Habre stated that if these histories were correct, he would not diagnose legal pneumoconiosis. Decision and Order at 16; Employer's Exhibit 22 at 36-39. Having credited the lengthy smoking histories in claimant's treatment records to find seventy-six pack-years established, and in light of Dr. Habre's concession, the administrative law judge permissibly found that Dr. Habre's reliance on only a sixty-two

---

also noted, correctly, that claimant's hospitalization and treatment records contain diagnoses of COPD and chronic bronchitis, but do not address whether these conditions are related to coal dust exposure. Decision and Order at 7, 12-13, 15-17. As neither Drs. McSharry and Sargent, nor claimant's treating physicians, attribute any of claimant's diagnosed conditions to coal mine dust exposure, we affirm the administrative law judge's finding that this evidence does not support a finding of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); Decision and Order at 16-17.

pack-year smoking history rendered his opinion less probative. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1994) (an administrative law judge may take into account the fact that a physician has relied upon an inaccurate smoking history); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988).

It is within the purview of the administrative law judge to evaluate the evidence and make credibility determinations, and the Board will not substitute its judgment for that of the administrative law judge. *See Compton*, 211 F.3d at 207-08, 22 BLR at 2-168; *Mays*, 176 F.3d at 764, 21 BLR at 2-606; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. Because the administrative law judge permissibly discredited the opinion of Dr. Habre, the only opinion supportive of a finding that claimant suffers from legal pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[14]

**Disability Causation**

To establish that total respiratory or pulmonary disability is due to pneumoconiosis, claimant is required to establish that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

Having found that claimant established the existence of clinical pneumoconiosis but not legal pneumoconiosis, the relevant inquiry before the administrative law judge was whether claimant's clinical pneumoconiosis was a substantially contributing cause of his total disability. 20 C.F.R. §718.204(c). The administrative law judge correctly determined that only the opinion of Dr. Habre could potentially establish disability causation.[15] Decision and Order at 17-18.

---

[14] The administrative law judge specifically found that even if the contrary medical opinions of Drs. McSharry and Sargent were not of record, he would still find Dr. Habre's opinion insufficient to establish legal pneumoconiosis. Decision and Order at 16.

[15] The administrative law judge correctly noted that both Drs. Sargent and McSharry opined that cigarette smoking was the sole cause of claimant's disabling impairment. Decision and Order at 18. Thus, these opinions cannot support claimant's burden at 20 C.F.R. §718.204(c).

Dr. Habre stated that the presence of pneumoconiosis on x-ray, 1/1, supported the conclusion that coal mine dust contributed substantially to claimant's disabling lung disease. During his deposition, however, Dr. Habre acknowledged that clinical pneumoconiosis of the same degree seen on claimant's x-ray does not always cause impairment. Decision and Order at 5-6, 17-18; Employer's Exhibit 22 at 11-14, 18-25. The administrative law judge permissibly found that in light of this statement, Dr. Habre did not adequately explain how claimant's clinical pneumoconiosis caused, contributed to, or had any material effect on claimant's disability. *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 18. Rather, as the administrative law judge observed, Dr. Habre's disability causation opinion "relates primarily to claimant's severe and advanced COPD, which I have found is unrelated to [his] coal mine employment." Decision and Order at 5-6, 17-18; Employer's Exhibit 22 at 11-14, 21-26, 28, 30-32, 34; Director's Exhibit 9. Thus, the administrative law judge permissibly concluded that Dr. Habre's opinion is not sufficient to establish that clinical pneumoconiosis is a "substantially contributing cause" of claimant's disabling impairment pursuant to 20 C.F.R. §718.204(c). *See Consolidation Coal Co. v. Held*, 314 F.3d 184, 187-8, 22 BLR 2-564, 2-571 (4th Cir. 2002); *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 18. As this finding is supported by substantial evidence, it is affirmed. *See Compton*, 211 F.3d at 207-08, 22 BLR at 2-168.

As the administrative law judge permissibly discredited the only supporting medical opinion, we affirm his finding that claimant failed to establish that clinical pneumoconiosis is a substantially contributing cause of his disability, pursuant to 20 C.F.R. §718.204(c).[16] Because claimant failed to establish that his total disability is due to pneumoconiosis, an essential element of entitlement under 20 C.F.R. Part 718, we affirm the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

[16] The administrative law judge emphasized that even if the contrary medical opinions of Drs. McSharry and Sargent were not of record, he would still find Dr. Habre's opinion insufficient to establish that claimant's total disability is due to pneumoconiosis. Decision and Order at 18.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge