BRB No. 98-0290 BLA

LUTHER DANIELS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
McCOY CANEY COAL COMPANY	)	DATE ISSUED:
	)	
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 Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

Luther Daniels, Freeburn, Kentucky, *pro se*.

Mark E. Solomons (Arter & Hadden), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-00344) of Administrative Law Judge Daniel F. Sutton 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 found sixteen and three-quarter years of qualifying coal mine employment. Decision and Order at 3-4. Considering entitlement pursuant to 20 C.F.R. Part 718, the administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he

will not respond 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 (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 the conclusions of law are rational, supported by substantial evidence, and in accordance with the 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).

To establish entitlement to benefits under 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *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*). Failure to establish any one of these elements precludes entitlement. *Id*.

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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. The record contains thirty-five interpretations of twelve x-rays taken between 1974 and 1992. Director's Exhibits 10, 13-16, 18, 19, 24, 37-39, 41, 44; Employer's Exhibits 1, 3. The administrative law judge found that only four of the thirty-five x-ray interpretations were rendered as positive for the presence of pneumoconiosis and that the remaining thirty-one were all negative. Decision and Order at 4-7. The administrative law judge correctly noted that the vast majority of the negative interpretations were rendered by physicians who were B-readers and/or B-readers and Board-certified radiologists, while only two of the four positive interpretations were rendered by physicians identified as B-readers. *See* Decision and Order at 6-7. The administrative law judge also correctly found that the medical credentials of the other two physicians rendering positive interpretations were not in the record. *See* Decision and Order at 6-7; Director's Exhibit 44. Thus, the administrative law judge permissibly concluded that the preponderance of the x-ray evidence was insufficient to establish the existence of pneumoconiosis in light of the majority of negative interpretations by physicians with superior qualifications. Decision and Order at 7; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Inasmuch as the administrative law judge weighed the x-ray evidence not merely in terms of the quantity of negative interpretations but the qualifications of the interpreting physicians as well, and the weight of the evidence is clearly negative for the presence of pneumoconiosis, we affirm the administrative law judge's finding that the x-ray evidence fails to establish the presence of

pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).[1] *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993).

Further, the administrative law judge considered the entirety of the medical opinion evidence of record and rationally determined that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 10. Dr. Soliva, claimant's treating physician, submitted the notes taken during claimant's office visits as well as a summary statement, that claimant suffers from pneumoconiosis and is thereby totally disabled. Director's Exhibit 23. Dr. Myers' only discussion of possible pneumoconiosis was found under his evaluation of claimant's chest x-ray. Dr. Myers stated that "[t]he lungs...show micronodular opacities scattered throughout all zones, both lungs compatible with silicosis, Category ½-q/t, all zones both lungs." Director's Exhibit 24. In his final comments, Dr. Myers noted that claimant's "silicosis would be the result of his entire coal mining and foundry experience." *Id*. Dr. Broudy concluded that "[t]here were radiographic changes that could be associated with simple coal worker's (sic) pneumoconiosis." Director's Exhibit 11. The administrative law judge permissibly found that the reports of Drs. Soliva, Myers and Broudy were outweighed by the preponderance of the more credible medical opinions of Drs. Mettu, Vuskovich, Dahhan, Lane, Anderson, Branscomb and Fino, all of whom opined that claimant does not suffer from pneumoconiosis. Decision and Order at 10; Director's Exhibits 10, 11, 23, 24, 39, 40, 42, 44; Employer's Exhibits 1-3, 9, 16; *Trumbo v. Reading Anthracite Company*, 17 BLR 1-85 (1993); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Perry, supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) as it is supported by

[1] The administrative law judge properly found that the existence of pneumoconiosis could not be established pursuant to 20 C.F.R. §718.202(a)(2), (3) as there is no biopsy evidence of record, this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. *See* 20 C.F.R. §§718.304, 718.305, 718.306; Decision and Order at 4; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

substantial evidence and in accordance with law. *Trent*, *supra*; *Perry*, *supra*.

Inasmuch as claimant has failed to establish the presence of pneumoconiosis, an essential element of entitlement under Part 718, entitlement thereunder is precluded and we therefore affirm the denial of benefits. *See Trent*, *supra*; *Perry*, *supra*.

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge