BRB No. 99-0240 BLA

JAMES TAYLOR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
QUINTANA COAL COMPANY, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
KENTUCKY COAL PRODUCERS' SELF-INSURANCE FUND	)	
	)	
and	)	
	)	
KENTUCKY COAL COMPANY	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employers/Carriers-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DECISION and ORDER
	)	
Party-in-Interest	)	

Appeal of the Decision and Order Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

John L. Barton (Paul D. Deaton Law Office), Paintsville, Kentucky, for claimant.

David H. Neeley (Neeley & Reynolds, Law Offices, P.S.C.), Prestonsburg, Kentucky for employer, Quintana Coal Company.

Richard A. Dean (Arter & Hadden, LLP), Washington, D.C., for employer, Kentucky Coal Company.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-BLA-0316) of Administrative Law Judge Thomas F. Phalen, Jr. 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 that claimant established a coal mine employment history of twelve years, Decision and Order at 4-6, and that employers have conceded the issue of total disability pursuant to 20 C.F.R. §718.204(c), Decision and Order at 18-19. On the basis of this concession, the administrative law judge concluded that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309. *See Sharondale Corp. v. Ross,* 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). The administrative law judge further considered the entirety of relevant evidence of record and concluded that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Finally, the administrative law judge concluded that claimant failed to establish that his totally disabling respiratory impairment was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. On appeal, claimant generally contends that the x-ray evidence and medical opinion evidence supports a finding of the existence of pneumoconiosis pursuant to Section 718.202(a). Employer, Quintana Coal Company, in response, urges affirmance of the administrative law judge's Decision and Order denying benefits. Employer, Kentucky Coal Company, also responds and urges affirmance of the denial of benefits.[1] The Director, Office of Workers' Compensation Programs, as party-in-interest has not filed a brief in this appeal.[2]

[1]Employer, Kentucky Coal Company, also contends that it should be dismissed from the case. We do not address that contention, however, as we affirm the denial of benefits.

[2]We affirm, as unchallenged on appeal, the administrative law judge's finding that, based on employers' concession of total disability, claimant established a material change in conditions pursuant to Section 725.309. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Claimant contends that the treating physicians, Drs. Adams and Ortiz, diagnosed the presence of severe lung disease related to coal mine employment. Claimant further asserts that the opinions of various other physicians support a finding of the existence of clinical or legal pneumoconiosis and that the positive x-ray interpretations of record support the presence of the disease.

(1983). We further affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment determination and his determination that claimant was unable to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) as the record is devoid of autopsy or biopsy evidence. *See Skrack, supra*.

We reject claimant's assertions and affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis. In finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the administrative law judge considered the entirety of x-ray evidence of record and, in a permissible exercise of his discretion, found that claimant failed to carry his burden of demonstrating the existence of the disease as the weight of the readings by physicians with the superior qualifications of B-reader and/or board-certified radiologist, were negative for the existence of the disease.[3] Director's Exhibits 18, 19, 39, 43, 45, 47, 49; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP,* 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Vance v. Eastern Associated Coal Corp.*, 8 BLR 1-65 (1985); *Aimone v. Morrison Knudson Co.*, 8 BLR 1-32 (1985). Accordingly, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *See Ondecko, supra*.

We further affirm the administrative law judge's determination that claimant was unable to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(3). There is no evidence of complicated pneumoconiosis and this case involves a living miner's claim which was filed subsequent to January 1, 1982. Consequently, claimant is unable to avail himself of any of the presumptions found at Sections 718.304-306. *See* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305, 718.306.

Finally, we affirm the administrative law judge's determination that claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). In reaching this conclusion, the administrative law judge considered the entirety of the relevant evidence of record and concluded that of the physicians diagnosing the presence of pneumoconiosis, Drs. Fritzhand, Mettu, Ortiz and

[3]A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A board-certified radiologist is a physician who has been certified by the American Board of Radiology as having a particular expertise in the field of radiology.

Adams, Director's Exhibits 14, 40, 45, 49, only the opinions of Drs. Fritzhand and Mettu constituted credible medical opinions, since the opinions of Drs. Ortiz and Adams were entitled to little weight as they failed to explain their conclusions. *See Griffith v. Director, OWCP,* 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tussey v. Island Creek Coal Co.,* 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *see York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *White v. Director, OWCP*, 6 BLR 1-368, 1-371 (1983). The administrative law judge went on to conclude, however, in a permissible exercise of his discretion, that the otherwise credible opinions of Drs. Mettu and Fritzhand failed to outweigh the contrary credible opinions of no pneumoconiosis rendered by Drs. Broudy, Fino, Anderson, Dahhan and Westerfield, Director's Exhibits 40, 45, 47, 49. *See Ondecko, supra*. Accordingly, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we must affirm the denial of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge