

BRB No. 00-0219 BLA

JIMMY D. ROWE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Jennifer U. Toth (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

Claimant appeals the Decision and Order - Denial of Benefits (99-BLA-0431) of Administrative Law Judge Robert L. Hillyard 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 eighteen years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 4. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the evidence of record is sufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.204(c)(4). The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.201, 718.202, 718.203, 718.204. Failure to establish any 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*).

Claimant contends that Dr. Gibson's positive x-ray reading is sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by the positive x-ray readings of Drs. Powell, Layne and Myers. We disagree. The administrative law judge permissibly found that the existence of pneumoconiosis was not established based on the preponderance of negative x-ray readings by physicians with superior qualifications. Director's Exhibit 36; Decision and Order at 11. 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Ry. 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); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

Claimant also contends that Dr. Gibson's opinion is sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), and should be accorded dispositive weight because he is claimant's treating physician. Dr. Gibson diagnosed moderate chronic obstructive pulmonary disease with chronic bronchitis, severe chronic back pain, arthritis and severe depression. Director's Exhibit 36. As the administrative law judge noted, however, Dr. Gibson did not indicate that claimant's chronic obstructive pulmonary disease was related to his coal mine employment, and none of the other physicians of record diagnosed the existence of pneumoconiosis or any condition related to claimant's coal mine employment. Director's Exhibits 13, 33; Employer's Exhibits 1-5; see *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1988); *Perry, supra*. Moreover, contrary to claimant's contention, the administrative law judge is not required to give greater weight to the opinion of claimant's treating physician, see *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994), nor, contrary to claimant's contention, is Dr. Gibson's positive x-ray reading sufficient to establish the existence of pneumoconiosis under Section 718.202(a)(4). *Anderson, supra*. Accordingly, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.204(a)(4).

Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish existence of pneumoconiosis pursuant to Section 718.202(a)(1), (4) as supported by the substantial evidence.¹

Moreover, inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to 20 C.F.R. Part 718, benefits thereunder are precluded, *Trent, supra*; *Perry, supra*, and we need not address claimant's contention that Dr. Gibson's opinion establishes total disability.²

¹ The administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(2), (3), 718.203, and 718.204(c)(1)-(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² Moreover, in any case, we would not address claimant's general contention that Dr. Gibson's opinion establishes total disability as it is not sufficiently briefed. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

Accordingly, the administrative law judge's Decision and Order - Denial of 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