BRB Nos. 04-0131 BLA
and 04-0131 BLA-A

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| CHARLES RICHARD WILLIAMS | ) | |
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| Claimant-Petitioner | ) | |
| Cross-Respondent | ) | |
| | ) | |
| v. | ) | DATE ISSUED: 10/13/2004 |
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| CONSOLIDATION COAL COMPANY | ) | |
| | ) | |
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| Employer-Respondent | ) | |
| Cross-Petitioner | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
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| | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Timothy F. Cogan (Cassidy Myers Cogan Voegelin & Tenn), Wheeling, West Virginia, for claimant.

William S. Mattingly (Jackson & Kelly), Morgantown, West Virginia, for employer.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor, 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals and employer cross-appeals from the Decision and Order (2001-BLA-05442) of Administrative Law Judge Daniel L. Leland 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 credited the miner with thirty-five and one-half years of coal mine employment and based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge determined that the claim, submitted on April 19, 2001, was timely filed and that employer was the properly designated responsible operator. On the merits, the administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a). Accordingly, benefits were denied.

Claimant argues that the administrative law judge erred in failing to find that the medical opinions of record establish the existence of pneumoconiosis. In its cross-appeal, employer contends that the administrative law judge erred in finding that the claim was timely filed, as Dr. Reyes told claimant that he was totally disabled due to pneumoconiosis in 1994. Employer also argues that the administrative law judge erred in designating it as the responsible operator, as claimant last worked as a miner for the State of Ohio which, according to employer, has consented to be a party to claims under the Act. The Director, Office of Workers' Compensation Programs, has responded and asserts that the administrative law judge properly determined that the claim was timely filed and that employer is the responsible operator.[1]

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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[1] We affirm the administrative law judge's determination that claimant did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(3), as it has not been challenged on appeal. Decision and Order at 8; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-1270 (1983).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 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 (2001); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge determined that the opinions in which Drs. Lenkey, Singh, and Garson attributed claimant's obstructive lung disease to coal dust exposure and cigarette smoking are not adequately reasoned because the physicians did not provide a rationale for their conclusions other than their references to claimant's history of coal dust exposure. Decision and Order at 8; Director's Exhibits 9, 10, 30, 36, 45; Claimant's Exhibit 1; Employer's Exhibit 9. With respect to the opinions in which Drs. Altmeyer, Branscomb, and Renn concluded that claimant's obstructive lung disease was due entirely to smoking, the administrative law judge credited them as well reasoned and consistent with the evidence of record. *Id.*; Director's Exhibit 28; Employer's Exhibits 2, 15, 18. The administrative law judge discredited the opinion in which Dr. Spagnolo attributed claimant's pulmonary impairment to cigarette smoking on the ground that Dr. Spagnolo did not consider whether claimant was suffering from legal pneumoconiosis. Decision and Order at 8; Employer's Exhibits 3, 17. Based upon this weighing of the evidence, the administrative law judge determined that claimant failed to prove that he has pneumoconiosis. *Id*.

Claimant contends that the administrative law judge erred in finding that Drs. Lenkey, Singh, and Garson did not identify adequate bases for their opinions. Claimant's allegation of error is without merit. At Dr. Lenkey's deposition, employer's counsel asked: "What is it in this man's case that allowed you to conclude that he was among the minority of miners adversely affected by coal dust exposure?" Director's Exhibit 30 at 21. Dr. Lenkey replied: "Well, simply cause and effect…since we know coal dust exposure can cause airflow limitation, *i.e.*, obstruction, it was my reasoning that based on this occupational history, that this did cause the [pulmonary function test] abnormalities." *Id*. Similarly, Dr. Singh indicated that because claimant had smoked cigarettes and had worked in the mines and because chronic obstructive disease (COPD) can be caused by smoking and coal dust inhalation, he attributed claimant's lung disease to both agents and could not differentiate between them. Employer's Exhibit 9 at 26, 28. Dr. Garson also identified both smoking and coal dust exposure as the causes of claimant's COPD. After detailing claimant's work history, Dr. Garson stated that:

> [Claimant's] underground coal dust exposure was sufficient also to produce his chronic obstructive pulmonary disease or COPD.
>
> As you are aware, it is not possible to determine the proportion of these

> exposures which led to COPD. Further, it is not required in law or regulation that such be done, but only that the opportunity of exposure be documented as I have done so above.

Director's Exhibit 45.

In light of the statements made by Drs. Lenkey, Singh, and Garson, we hold that the administrative law judge acted within his discretion in determining that these physicians did not adequately explain their determination that claimant's COPD was related to coal dust exposure, but rather, relied upon claimant's history of coal dust exposure without explaining whether the medical data in this particular case supported a diagnosis of occupationally induced lung disease. *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). We affirm, therefore, the administrative law judge's finding that claimant has not established the existence of pneumoconiosis under Section 718.204(a)(4).

Because we have affirmed the administrative law judge's determination that claimant has not established that he is suffering from pneumoconiosis pursuant to Section 718.202(a), an essential element of entitlement, we must also affirm the denial of benefits. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1. Therefore, we need not address the issues raised in employer's cross-appeal. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge