

BRB No. 05-0485 BLA

GRANVILLE P. COMBS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
M C TRUCKING COMPANY,)	
INCORPORATED)	
)	DATE ISSUED: 10/17/2005
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 – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5935) of Administrative Law Judge Daniel J. Roketenetz rendered 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 claimant with at least twenty-nine years of coal mine employment and adjudicated the

claim pursuant to 20 C.F.R. Part 718, based on claimant's January 15, 2002 filing date.¹ Decision and Order at 4, 5. The administrative law judge found that the medical evidence of record did not establish either the existence of pneumoconiosis or that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence when he found that claimant did not establish the existence of pneumoconiosis. Claimant also contends that the administrative law judge erred in his consideration of the medical opinion evidence in finding that claimant did not establish that he is totally disabled. Employer has not responded in this appeal. The Director, Office of Workers' Compensation Programs responds, urging affirmance of the administrative law judge's denial of benefits.²

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 415-16, 21 BLR 2-192, 2-196-7 (6th Cir. 1997). Failure to establish any one of these elements precludes entitlement. *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, 1-2 (1986)(*en banc*).

Pursuant to Section 718.202(a)(1), the administrative law judge noted accurately that neither of the two readings of the sole x-ray of record was positive for the existence

¹ The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

² We affirm as unchallenged on appeal the administrative law judge's decision to credit claimant with at least twenty-nine years of coal mine employment, and his findings that the existence of pneumoconiosis was not established under 20 C.F.R. §718.202(a)(2), (a)(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

of pneumoconiosis. Decision and Order at 6-7; Director's Exhibits 14, 15. Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' radiological credentials, merely counted the negative readings, and selectively analyzed the readings, lack merit. We therefore affirm the administrative law judge's finding pursuant Section 718.202(a)(1).

Pursuant to Section 718.202(a)(4), the administrative law judge found that the sole medical opinion of record, Dr. Hussain's April 10, 2002 medical report, did not contain a diagnosis of pneumoconiosis. Substantial evidence supports this finding. As the administrative law judge found, Dr. Hussain diagnosed claimant with heart failure and chronic obstructive pulmonary disease (COPD), but did not link the COPD to claimant's coal mine employment. Director's Exhibit 14; *see* 20 C.F.R. §718.201(a)(2). Instead, Dr. Hussain attributed the COPD solely to "tobacco abuse." Director's Exhibit 14 at 4. The administrative law judge noted further that although Dr. Hussain diagnosed hypoxemia based on blood gas study results, Dr. Hussain did not indicate whether the hypoxemia was a "chronic" disease.³ Decision and Order at 8; *see* 20 C.F.R. §718.201(a)(2)(defining pneumoconiosis as including any "chronic lung disease or impairment" arising out of coal mine employment).

Since the administrative law judge properly found that the record contains no medical opinion evidence of pneumoconiosis, claimant's contention that the administrative law judge substituted his interpretation of the medical evidence for the reasoned judgment of a physician lacks merit. We therefore affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Because claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement in a miner's claim pursuant to 20 C.F.R. Part 718, entitlement to benefits is precluded. *Hill*, 123 F3d at 415-16, 21 BLR at 2-196-7; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. We therefore affirm the denial of benefits.

³ Moreover, Dr. Hussain specified that claimant has no occupational lung disease caused by his coal mine employment. Director's Exhibit 14 at 5.

Accordingly, the administrative law judge's Decision and Order – Denial of benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge