

BRB No. 99-0296 BLA

HUBERT E. FERRELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SOUTHERN OHIO 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 Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Hubert E. Ferrell, Hepzibah, West Virginia, *pro se*.

Douglas G. Lee (Stephoe & Johnson), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (96-BLA-0404) of Administrative Law Judge Richard A. Morgan 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, and the parties stipulated to, at least twelve years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> Decision and Order at 3. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of totally disabling pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. Part 718. Accordingly, benefits were denied. On appeal,

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<sup>1</sup> Claimant filed his claim for benefits on October 24, 1994. Director's Exhibit 1.

claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate 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 conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish 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, 718.202, 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*).

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. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) based on the preponderance of the negative x-ray readings by physicians with superior qualifications. Further, the administrative law judge found that at least three x-rays were consistently read negative, the only x-ray to be read positive, was also read negative, and the most recent x-rays were read negative consistent with earlier negative readings. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Aimone v. Morrison Knudson Co.*, 8 BLR 1-32 (1985); Director's Exhibits 13, 14, 27-31, 33; Employer's Exhibit 4; Decision and Order at 14. Further, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) and (3) as there is no biopsy evidence of record, this living miner's claim was filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. Decision and Order at 8; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). In addition, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly accorded greater weight to Dr. Renn's finding of no pneumoconiosis than to Dr. Harron's diagnosis of pneumoconiosis, because it

was better reasoned and documented, and because of Dr. Renn's superior qualifications. Director's Exhibits 10, 22; Decision and Order at 10; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 536, 21 BLR 2-323, 2-341 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (1997); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Cosalter v. Mathies Coal Co.*, 6 BLR 1-1182 (1984). We therefore affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(4) as supported by substantial evidence.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, benefits thereunder are precluded. *Trent, supra*; *Perry, supra*.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge