BRB No. 99-0673 BLA

JERRY D. BUSH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
WESTMORELAND COAL COMPANY	)	
	)	
Employer-Respondent	)	
	)	
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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Jerry D. Bush, Big Stone Gap, Virginia, *pro se.*

Natalie D. Brown (Jackson & Kelly, PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and

[1] Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Order Denying Benefits (98-BLA-0253) of Administrative Law Judge Pamela Lakes Wood 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 twenty-seven years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on claimant's February 7, 1997 filing date. In weighing the medical evidence of record, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits. In response to claimant's appeal, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.[2]

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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).

In order to establish entitlement to benefits under 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; *Hobbs v. Clinchfield Coal Co.* [*Hobbs II*], 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to prove any one of these elements precludes entitlement. *Id.*

[2] The parties do not challenge the administrative law judge's decision to credit claimant with twenty-seven years of coal mine employment. Inasmuch as this finding is not adverse to claimant, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

After consideration of the administrative law judge's Decision and Order 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). In finding that the weight of the x-ray evidence of record was negative for the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge correctly determined that the record contains nine readings of the three x-ray films of record by readers who are either B readers or dually qualified as B readers and Board-certified radiologists, and, of these readings, eight were interpreted as negative for the existence of pneumoconiosis.[3] Decision and Order at 5, 12; *see* Director's Exhibits 21, 22, 28, 30; Claimant's Exhibits 1, 2; Employer's Exhibits 5, 7, 8. Inasmuch as the administrative law judge reasonably exercised her discretion as fact-finder in relying on the preponderance of negative interpretations provided by the best qualified physicians, we affirm her finding that the weight of the x-ray evidence is negative for the existence of pneumoconiosis. Decision and Order at 12; Director's Exhibits 21, 22, 28, 30; Claimant's Exhibits 1, 23; Employer's Exhibits 5, 7, 8; 20 C.F.R. §718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); *Edmiston v. F & R Coal Co.*, 14 BLR 1-710 (1990); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Consequently, we affirm the administrative law judge's finding that the

[3] The record contains ten readings of the three x-ray films of record. Director's Exhibits 21, 22, 28, 30; Claimant's Exhibits 1, 2; Employer's Exhibits 5, 7, 8. In setting forth these readings, the administrative law judge found that the interpretation of the March 4, 1994 x-ray film by Dr. Hickam, whose qualifications are not contained in the record, was not in the ILO-U/C classification format and also made no mention of pneumoconiosis. Decision and Order at 5, n.5; Claimant's Exhibit 1; 20 C.F.R. §718.102.

x-ray evidence of record failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

In addition, we affirm the administrative law judge's determination that claimant has not established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3). The administrative law judge properly found that there is no biopsy evidence of record and, therefore, that claimant has not established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2). Decision and Order at 13; 20 C.F.R. §718.202(a)(2). In addition, she properly found that claimant was not entitled to the presumptions set forth at 20 C.F.R. §718.202(a)(3), *i.e.*, there is no evidence of complicated pneumoconiosis, *see* 20 C.F.R. §718.304; the claim was not filed prior to January 1, 1982, *see* 20 C.F.R. §718.305(e); and the instant case involves a living miner's claim, *see* 20 C.F.R. §718.306(a). Decision and Order at 13; 20 C.F.R. §718.202(a)(3).

With respect to 20 C.F.R. §718.202(a)(4), the administrative law judge properly considered the entirety of the medical opinion evidence of record and rationally concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis. *Perry, supra*. The administrative law judge properly found that Dr. Paranthaman opined that claimant suffers from a chronic obstructive pulmonary disease due to his coal dust exposure, Director's Exhibits 17, 19, whereas Dr. Castle opined that claimant's respiratory impairment was not due to his coal dust exposure, but rather, due to asthma and heart disease.[4] Decision and Order at 13-15; Employer's Exhibits 5, 15. The administrative law judge, after noting that both physicians were Board-certified in Internal Medicine and Pulmonary Diseases, reasonably accorded determinative weight to the opinion of Dr. Castle over the contrary opinion of Dr. Paranthaman because she found this opinion more persuasive in its rationale. Decision and Order at 14-15; *see Thorn v. Itmann Coal Co.*, 3 F.3d 713, 18 BLR 2-16 (4th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Moreover, the administrative law judge reasonably found Dr. Castle's opinion, that claimant's respiratory impairment was not due to coal dust exposure, supported by the other medical opinions of record. Decision and Order at 14-15; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993)*;*

[4] The administrative law judge correctly found that Drs. Paranthaman and Castle were examining physicians. The administrative law judge also found that the record contains the opinions of Drs. Branscomb, Fino and Morgan, each of whom only reviewed the evidence of record. Decision and Order at 7-11; Director's Exhibits 17, 19; Employer's Exhibits 5, 10-15.

Clark, supra; *see generally Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986). Inasmuch as the administrative law judge is empowered to weigh the medical opinion evidence of record and to draw her own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal, *Anderson v. Valley Camp of Utah*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), we affirm the administrative law judge's finding that claimant failed to satisfy his burden of proof in establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Decision and Order at 15; *see Perry, supra*; *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985).

Since claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a), a necessary element of entitlement under Part 718, an award of benefits in this miner's claim is precluded. *See Trent, supra; Perry, supra*.

Accordingly, the administrative law judge's Decision and Order Denying 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