

BRB No. 02-0417 BLA

WESLEY COLLINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
COON BRANCH CONSTRUCTION/ U.S. STEEL MINING COMPANY, LLC))	DATE ISSUED:
)	
and)	
)	
WEST VIRGINIA COAL-WORKERS' PNEUMOCONIOSIS FUND)	
)	
Employers/Carrier- Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Robert Weinberger (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for carrier.

Howard G. Salisbury, Jr. (Kay, Casto & Chaney, PLLC), Charleston, West Virginia, for U.S. Steel Mining Company, LLC.

Barry H. Joyner (Eugene Scalia, 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 GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (01-BLA-0293) of Administrative Law Judge Edward Terhune Miller 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).¹ The administrative law judge found sixteen and one-half years of coal mine employment established and adjudicated the claim under 20 C.F.R. Part 718.² Citing *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), the administrative law judge further found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied. Further, because benefits were denied, the administrative law judge determined that it was not necessary to resolve the responsible operator issue in this claim. Decision and Order at 3 n. 3; and 9.

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The instant claim was filed on April 27, 1995, Director's Exhibit 1.

On appeal, claimant contends that the administrative law judge erred in finding that the existence of pneumoconiosis and total disability were not established based on the medical opinion evidence of record. The West Virginia Coal-Workers' Pneumoconiosis Fund, as the carrier of Coon Branch Construction, and U.S. Steel Mining Co., LLC, the two named, potential, responsible operators in this case, respond, urging that the administrative law judge's Decision and Order denying benefits be affirmed and, alternatively, contending that they were erroneously named as potential responsible operators in this case. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, also responds, urging that if the Board does not affirm the administrative law judge's denial of benefits, the case should be remanded for the administrative law judge to determine which employer should be designated the responsible operator liable for the payment of any benefits in this case.³

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

In order to establish entitlement to benefits under Part 718 in this living miner's claim, it must be established that claimant suffered from pneumoconiosis, that the pneumoconiosis arose out of his coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3; 718.202; 718.203; 718.204; *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.*

Claimant contends that the administrative law judge erred in his weighing of the medical opinion evidence under Section 718.202(a)(4) when he found that the existence of pneumoconiosis was not established. The administrative law judge found that Dr. Ranavaya's opinion did not establish the existence of pneumoconiosis because Dr. Ranavaya, without further explanation, found that claimant had pneumoconiosis based on his

³ The administrative law judge's findings that the existence of pneumoconiosis and total disability were not established at 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

employment history and a positive x-ray interpretation. Decision and Order at 7; Director's Exhibit 7. The administrative law judge accorded little weight to Dr. Forehand's opinion that claimant had pneumoconiosis because he found Dr. Forehand's reasoning, that he could not rule out pneumoconiosis as a risk factor, did not contain sufficient certitude or substantiality to form a reliable basis for concluding that claimant has pneumoconiosis. Decision and Order at 7; Director's Exhibit 7. Similarly, the administrative law judge found that Dr. Vasudevan's opinion that claimant had "possible" or "possible or probable" coal workers' pneumoconiosis based on his CT scan and coal mine employment history, was "equivocal and insufficiently reasoned or objectively based to form a reliable basis for concluding that claimant has pneumoconiosis," as the preponderance of the CT scan evidence was negative and claimant's coal mine employment history alone was insufficient to make such a diagnosis. Decision and Order at 7; Director's Exhibit 39. The administrative law judge found that Dr. Rasmussen's declaration, that smoking and coal dust exposure were "two risk factors" for claimant's respiratory impairment, was insufficient to constitute a diagnosis of either clinical or legal pneumoconiosis, as it was no more than an equivocal statement as to possible causes of the claimant's impairment without any indication regarding the allocation between the two causes, and as such failed to show a substantial nexus between claimant's impairment and coal mine dust exposure, which is necessary to establish the existence of either clinical or legal pneumoconiosis. Decision and Order at 7; Director's Exhibit 35. This was rational. Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). See 30 U.S.C. §902(b); 20 C.F.R. §718.201; *U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Thus, the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a), in accordance with the standard enunciated by the Fourth Circuit in *Compton, supra*, is affirmed, as rational and supported by substantial evidence. Consequently, inasmuch as we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement, the administrative law judge's finding that entitlement under Part 718 is precluded is affirmed, see *Trent, supra*; *Perry, supra*. Because we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a), we need not address claimant's contentions regarding total disability or the named potential responsible operators contentions in this case regarding which party should be properly designated the responsible operator liable for the payment of benefits in

this case. *See Trent, supra; Perry, supra.*

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge