BRB Nos. 05-0428 BLA
and 05-0428 BLA-A

GARRY D. CHAPMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
APEX MINERALS INCORPORATED	)	
	)	DATE ISSUED: 09/29/2005
Employer- Respondent	)	
Cross-Petitioner	)	
	)	
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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Garry D. Chapman, Huddy, Kentucky, *pro se*.

Martin E. Hall (Jackson & Kelly), Lexington, Kentucky, for employer.

Rita Roppolo (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order – Denial of Benefits (2003-BLA-6706) of Administrative Law Judge Robert L. Hillyard, with respect to 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). Employer has filed a cross-appeal of the administrative law judge's Decision and Order. At the hearing in this case, employer sought the admission of evidence while acknowledging that it exceeded the evidentiary limitations set forth in 20 C.F.R. §725.414. The administrative law judge refused to admit the evidence but kept it in the record at employer's request. Hearing Transcript at 8-9. In his Decision and Order, the administrative law judge credited claimant with twenty-six years of coal mine employment and considered the claim, filed on September 14, 2001, pursuant to the regulations set forth in 20 C.F.R. Part 718. The administrative law judge found that claimant did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a) or that he is totally disabled under 20 C.F.R. §718.204(b)(2). Accordingly, benefits were denied.

On appeal, claimant argues generally that the denial of benefits was improper. In its cross-appeal, employer maintains that the administrative law judge mischaracterized Dr. Repsher's report under Section 718.204(b)(2)(iv). Employer also argues that the administrative law judge erred in excluding some of its evidence pursuant to Section 725.414(a)(3) and that the evidentiary limitations set forth in Section 725.414 are not valid. The Director, Office of Workers' Compensation Programs, is not participating in claimant's appeal, but has responded to employer's cross-appeal and urges the Board to reject employer's arguments.

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. *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 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 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. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one 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*).

Upon review of the administrative law judge's Decision and Order – Denial of Benefits, we hold that the administrative law judge's determination that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a) is supported by substantial evidence. With respect to the x-ray evidence, the administrative law judge rationally determined that it was insufficient to support a finding of pneumoconiosis at Section 718.202(a)(1), as the preponderance of readings by better qualified physicians is negative. Decision and Order at 8; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

The administrative law judge properly determined that Section 718.202(a)(2) and (a)(3) are not applicable in this case. *Id*.. There is no biopsy evidence or evidence of complicated pneumoconiosis in the record and this claim was filed by a living miner after January 1, 1982. Director's Exhibit 2; 20 C.F.R. §§718.202(a)(2), 718.304, 718.305(e).

With respect to the medical opinion evidence relevant to Section 718.202(a)(4), the administrative law judge acted within his discretion in finding that Dr. Tan's diagnosis of pneumoconiosis is entitled to little weight, as the physician did not explain how the documentation underlying his opinion supported his conclusions. Decision and Order at 10; Director's Exhibit 13; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). The administrative law judge also rationally determined that the contrary opinions of Drs. Dahhan and Repsher, as corroborated by the opinion of Dr. Hussain, outweighed Dr. Tan's opinion because their conclusions are better documented and reasoned and they are Board-certified pulmonologists and B readers.[1] *Id*.; Director's Exhibit 11; Employer's Exhibit 1; *Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269; *Justice*, 11 BLR 1-91.

Because the administrative law judge's finding that claimant did not prove the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4) is rational and supported by substantial evidence, it is affirmed. *Compton*, 211 F.3d 203, 22 BLR 2-162. Moreover, in light of the fact that claimant has not established an essential element of entitlement, the denial of benefits is also affirmed. *Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1. We decline, therefore, to address the arguments employer has raised in its cross-appeal.

[1] Dr. Tan's qualifications are not in the record.

Accordingly, we affirm the administrative law judge's Decision and Order – Denial of Benefits.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge