BRB No. 06-0277 BLA

LYNN A. MAYNOR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EAGLE ENERGY, INCORPORATED	)	
	)	DATE ISSUED: 09/19/2006
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Lynn A. Maynor, Artie, West Virginia, *pro se*.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order-Denial of Benefits (04-BLA-5050) of Administrative Law Judge Richard A. Morgan 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).[1]

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as claimant was last employed in the coal mine industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

Claimant filed his application for benefits on February 15, 2001. Director's Exhibit 2. Based on the date of filing the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited claimant with thirty years of coal mine employment, found that employer is the responsible operator, and that the evidence did not establish either the existence of pneumoconiosis or that claimant is totally disabled pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Decision and Order at 3, 9-12. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. In response, 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 submit a response brief on the merits of this appeal.[2]

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'Keeffe 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. Failure to establish any one of these elements precludes a finding of 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).

Pursuant to Section 718.202(a)(1), the administrative law judge considered five readings of three x-rays all interpreted by dually qualified Board-certified radiologists and B readers. Decision and Order at 4, 9. The administrative law judge found that there were three negative readings by Drs. Wheeler, Smith, and Wiot, one positive reading by Dr. Patel, and a reading for quality purposes by Dr. Binns. The administrative law judge noted that Dr. Patel's reading of the July 23, 2001 x-ray, the only positive reading of record, was countered by a negative reading for pneumoconiosis by Dr. Wheeler.

[2] The administrative law judge's length of coal mine employment finding, as well as his finding that employer is the responsible operator are affirmed as unchallenged and not adverse to claimant. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Decision and Order at 4; Director's Exhibits 15, 16; Employer's Exhibit 5. Because the administrative law judge rationally found the preponderance of the readings by dually qualified physicians was negative for the existence of pneumoconiosis, we must affirm his finding that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). 20 C.F.R. §718.202(a)(1); s*ee Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5(2004); Decision and Order at 9.

We also affirm the administrative law judge's finding under Section 718.202(a)(2) and (a)(3) because he correctly found that that there are no biopsy results to be considered, that none of the presumptions listed at 20 C.F.R. §718.202(a)(3) are applicable in this living miner's claim filed after January 1, 1982, and that the record contained no evidence of complicated pneumoconiosis. Decision and Order at 9. Therefore, claimant may not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3).

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the medical reports by treating physicians Drs. Mullins and Porterfield that diagnosed pneumoconiosis, the contrary opinions of Drs. Zaldivar and Crissali, and the medical records that reflect a history of chronic obstructive pulmonary disease and pneumoconiosis. Decision and Order 5-8; Director's Exhibit 9; Employer's Exhibits 3, 4, 12-14, 16; Claimant's Exhibit 1. The administrative law judge further considered Dr. Mullins's June 30, 2004 and August 3, 2005 depositions and Dr. Zaldivar's August 10, 2005 deposition. Dr. Mullins's initial report diagnosed claimant with coal workers' pneumoconiosis due to coal exposure based upon Dr. Patel's positive reading of the film dated July 23, 2001, and significant respiratory insufficiency "presumably" secondary to coal dust exposure based on claimant's June 23, 2001 blood gas study. Decision and Order at 5; Director's Exhibit 5.

The administrative law judge permissibly accorded less weight to Dr. Mullins's opinion because it was based on Dr. Patel's positive x-ray reading which was outweighed by the other negative interpretations of record, and on a blood gas study that Dr. Mullins later discounted as evidence of pneumoconiosis.[3] *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR

[3] The administrative law judge correctly found that Dr. Mullins stated that she diagnosed pneumoconiosis relying upon an abnormal blood gas study and later determined that the abnormalities were found to be due to causes other than pulmonary. Decision and Order at 6, 11; Claimant's Exhibit 2; Employer's Exhibit 15.

1-85, 1-88-89 and n.4 (1993); Decision and Order at 10. The administrative law judge therefore reasonably found Dr. Mullins's opinion neither adequately reasoned nor documented and accorded her opinion less weight than those of Drs. Zaldivar and Crissali. *Id.* Further, the administrative law judge also rationally found that Dr. Porterfield's opinion was not well-reasoned and well documented because he relied on Dr. Mullins's discredited initial report and provided no independent basis to support his opinion. *Id.*; Claimant's Exhibit 1.

Similarly, the administrative law judge permissibly found Dr. Karam's unexplained treatment notes, listing severe COPD and pneumoconiosis, unable to overcome the contrary opinions of Drs. Crissali and Zaldivar. *Compton*, 211 F.3d 203, 22 BLR 2-162; Decision and Order at 11. The administrative law judge reasonably found that the opinions of Drs. Crissali and Zaldivar are well supported by their examination of claimant, and the weight of the objective laboratory data. *Id*. We, therefore affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Because the administrative law judge properly found that the preponderance of the credited evidence under Section 718.202(a)(1), (4) is insufficient to establish claimant's burden of proof and subsections (a)(2), (a)(3) are not applicable in this case, claimant has failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Compton*, 211 F.3d 203, 22 BLR 2-162.

In light of our affirmance of the administrative law judge's finding that claimant has not established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27. Consequently, we need not address the administrative law judge's findings that claimant failed to establish that he is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b),(c). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge