BRB No. 97-1797 BLA

DON ESTEP	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK 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 of Edward J. Murty, Jr., Administrative Law Judge, United States Department of Labor.

Don Estep, Grundy, Virginia, *pro se*.[1]

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

[1] Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, 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).

Claimant, without the assistance of counsel, appeals the Decision and Order (97-BLA-0915) of Administrative Law Judge Edward J. Murty, Jr. denying benefits on a claim[2] 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited claimant with "about twenty" years of coal mine employment and found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). 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 denial. The Director, Office of Workers' Compensation Programs, has filed a letter indicating his intention not to 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 Co.*, 12 BLR 1-176 (1989). 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).

After consideration of the Decision and Order and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence, contains no reversible error, and therefore, it is affirmed. Relevant to Section 718.202(a)(1), the administrative law judge properly concluded that the x-ray evidence is insufficient to establish the existence of pneumoconiosis inasmuch as all four x-ray interpretations of record are negative for the existence of pneumoconiosis. Decision and Order at p.2 [unpaginated]; Director's Exhibits 11, 12, 20; Employer's Exhibit 2. Thus, we affirm this determination. Relevant to Sections 718.202(a)(2) and (a)(3), the administrative law judge properly determined that pneumoconiosis was not established inasmuch as the record does not contain any biopsy evidence, *see* 20 C.F.R. §718.202 (a)(2), this is a living miner's claim filed after January 1, 1982, and the record is devoid of evidence of complicated pneumoconiosis, *see* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305 and 718.306.

[2] Claimant is Don Estep, the miner, who filed his application for benefits on May 28, 1996. Director's Exhibit 1.

Decision and Order at p.2 [unpaginated]. Hence, we affirm the administrative law judge's findings pursuant to Sections 718.202(a)(2) and (a)(3). With respect to Section 718.202(a)(4), the administrative law judge found that the two medical reports of record fail to establish the existence of pneumoconiosis inasmuch as both Drs. Forehand and Hippensteel opined that claimant does not suffer from coal workers' pneumoconiosis. Decision and Order at p.3 [unpaginated]; Director's Exhibit 9; Employer's Exhibit 2. We affirm the administrative law judge's finding under Section 718.202(a)(4) inasmuch as the record does not contain a physician's opinion diagnosing the existence of pneumoconiosis.

Inasmuch as claimant failed to satisfy his burden of affirmatively establishing the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement under Part 718, we affirm the administrative law judge's finding that claimant is not entitled to benefits.[3] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY

[3] Claimant's failure to affirmatively establish the existence of pneumoconiosis pursuant to Section 718.202(a) obviates the necessity to address the administrative law judge's total disability determinations pursuant to Section 718.204(c).

Administrative Appeals Judge