

BRB No. 98-1611 BLA

WILLIAM YADLOSKI)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FREEMAN UNITED COAL MINING)	DATE ISSUED:
COMPANY)	
)	
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.

William Yadloski, Christopher, Illinois, *pro se*.

David N. Michael (Gould & Ratner), Chicago, Illinois, for employer.

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

PER CURIAM:

Claimant,¹ without the benefit of counsel, appeals the Decision and Order (96-BLA-0557) of Administrative Law Judge Edward J. Murty, Jr. 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). The administrative law judge concluded that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

¹ Claimant is William Yadloski, the miner, who filed two applications for benefits with the Department of Labor (DOL). The first on July 18, 1983, Director's Exhibit 25, which was administratively denied, and the second on March 2, 1995. Director's Exhibit 1.

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Antonio v. Bethlehem Mines Corp.*, 6 BLR 1-702 (1983). 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). Employer, in response, asserts that the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a) is supported by substantial evidence, and accordingly, urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond to the instant appeal.²

In order to establish entitlement to benefits in a living miner's claim, claimant must establish that the miner has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. Failure to prove any of these requisite elements of entitlement compels a denial of benefits. See 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*).

The administrative law judge found that the evidence failed to establish the existence

² The administrative law judge found that this was claimant's second claim, and the record reflects that claimant's first claim was ultimately denied. Director's Exhibit 25. The administrative law judge failed to determine whether the evidence established a material change in conditions as required by Section 725.309(d), and as set forth in *Sahara Coal Co. v. Director, OWCP, [McNew]*, 946 F.2d 554, 15 BLR 2-227 (7th Cir. 1991). However, as the administrative law judge reviewed all of the relevant evidence of record and concluded that the evidence fails to support entitlement, *infra*, we hold that this failure constitutes harmless error. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

of pneumoconiosis pursuant to Section 718.202(a). The administrative law judge accurately found that the record contained positive readings of the sixteen x-rays, but that none of the films were read as positive by a majority of the readers. Decision and Order at 2. The administrative law judge permissibly gave the greatest weight to the negative interpretations of Dr. Wiot, who read many of the x-rays, on the basis of his superior credentials as a professor of radiology and as one of the original C readers. The administrative law judge further noted that Dr. Wiot's negative readings were supported by the negative readings of Dr. Wheeler, a professor of radiology at Johns Hopkins University Hospital. Employer's Exhibit 35; *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Trent, supra*; *Allen v. Riley Hall Coal Co.*, 6 BLR 1-376 (1983). Inasmuch as the administrative law judge's finding crediting the negative x-rays of record is supported by substantial evidence, we affirm the administrative law judge's finding at Section 718.202(a)(1).

Further, as the administrative law judge correctly concluded, because the record did not contain any autopsy or biopsy evidence, the existence of pneumoconiosis could not be established under Section 718.202(a)(2), and as none of the presumptions contained in Section 718.202(a)(3) are applicable, the existence of pneumoconiosis could not be established at Section 718.202(a)(2) and (3). We affirm, therefore, those findings.

Finally, the administrative law judge concluded that the medical opinion evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). The administrative law judge found that Drs. Sanjabi, Director's Exhibit 8, Orris, Claimant's Exhibit 4, and Cohen, Claimant's Exhibit 10, all opined that claimant had pneumoconiosis, but that Drs. Selby, Employer's Exhibit 1, and Cugell, Employer's Exhibit 2, opined that he did not have pneumoconiosis, or a pulmonary impairment arising out of coal mine employment. Decision and Order at 4-5.³ The administrative law judge permissibly discounted the opinion of Dr. Sanjabi because he found that it was not supported by the underlying documentation, *see Worhach, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-

³ The administrative law judge relied upon Dr. Hellerstein's smoking history, but does not otherwise discuss his opinion, which is some 219 pages. Director's Exhibit 12, Employer's Exhibit 23. Dr. Hellerstein, diagnoses chronic obstructive pulmonary disease, but never indicates the cause of the condition. *Id.* Moreover, the administrative law judge fails to weigh the opinion of Dr. Sarah Long, who opined that claimant does not have pneumoconiosis. Director's Exhibit 13. As these opinions are insufficient to establish the existence of pneumoconiosis, however, we hold that any error committed by the administrative law judge's failure to weigh them is harmless. *See Larioni, supra.*

149 (1989)(*en banc*), and because he found that it relied upon an inaccurate smoking history. *Worhach, supra*; *Addison v. Director, OWCP*, 11 BLR 1- 68 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1983). He discounted Dr. Orris's opinion because he found that Dr. Orris failed to explain the role that the miner's smoking history played in his diagnosis. The administrative law judge also questioned Dr. Orris's underlying documentation, since he relied upon a negative x-ray and non-qualifying pulmonary function studies, without explaining how he was able to differentiate between conditions caused by coal mine employment and those caused by smoking. Decision and Order at 5; *see Worhach, supra, Clark, supra*. The administrative law judge weighed Dr. Cohen's opinion that the miner had pneumoconiosis against Dr Cugell's opinion that he did not, Decision and Order at 5, permissibly crediting Dr. Cugell's opinion over Dr. Cohen's based on Dr. Cugell's superior credentials. *See Woodward, supra; Worhach, supra; Scott, supra*. We affirm, therefore, the administrative law judge's determination that the evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(4), as it is supported by substantial evidence. Inasmuch as the administrative law judge's finding, that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(1)-(4), mandates a denial of benefits, we affirm the administrative law judge's denial of benefits in the instant claim *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

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge