BRB Nos. 88-2937 BLA
and 88-2937 BLA-A

ROBERT E. PRATT	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
CRAMER RECLAMATION, INCORPORATED; DEAN COAL COMPANY; POLEN COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
OHIO INDUSTRIAL COMMISSION	)	
	)	
Employers/Carrier-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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Robert E. Pratt, Jewell, Ohio, pro se.

Rodger Pitcairn (Marshall J. Breger, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: STAGE, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without legal representation, appeals the Decision and Order (87-BLA-2345) of Administrative Law Judge Robert L. Hillyard 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 credited claimant with thirty-eight years of qualifying coal mine employment, and determined that Cramer Reclamation, Inc. (Cramer), was properly identified as the responsible operator herein, but dismissed Cramer as a party to this action, as well as all other named employers and the carrier, pursuant to Crabtree v. Bethlehem Steel Corp., 7 BLR 1-354 (1984). The administrative law judge then found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202. Accordingly, benefits were denied. On appeal, claimant challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a cross-appeal, contending that the administrative law judge erred in dismissing employers and the carrier as parties herein. Employers have not participated in this appeal.

In an appeal by a claimant filed 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 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 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

In finding that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the administrative law judge properly reviewed all of the x-ray evidence and the qualifications of the readers, and determined that the record contained six interpretations of three films taken between June 19, 1980, and March 24, 1986. The administrative law judge permissibly found that the weight of the x-ray evidence was negative for pneumoconiosis, since the single positive interpretation of record, 1/0 s, was of the June 19, 1980 film by Dr. Gordonson, who later interpreted the March 24, 1986 film as negative for pneumoconiosis, 0/1 t. Decision and Order at 5-8; Director's Exhibits 12-14, 21, 22; see Handy v. Director, OWCP, 16 BLR 1-73 (1990); Prater v. Clinchfield Coal Co.,

12 BLR 1-121 (1989). We, therefore, affirm the administrative law judge's findings pursuant to Section 718.202(a)(1), as supported by substantial evidence.

We also affirm, as supported by substantial evidence, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2), as the record contains no biopsy or autopsy evidence. Decision and Order at 8.

The administrative law judge next found that, inasmuch as the evidence of record was insufficient to establish the existence of complicated pneumoconiosis or a totally disabling respiratory or pulmonary impairment, and the instant claim was not a survivor's claim, the respective presumptions contained in 20 C.F.R. §§718.304, 718.305 and 718.306 were not available to claimant. In finding that claimant failed to establish invocation of the presumption at Section 718.305 by establishing total disability pursuant to 20 C.F.R. §718.204(c), the administrative law judge determined that the pulmonary function study evidence of record was non-qualifying pursuant to Section 718.204(c)(1), and permissibly found that although the most recent blood gas study produced marginal values, the weight of the blood gas study evidence of record was insufficient to establish total disability pursuant to Section 718.204(c)(2), since both earlier studies resulted in values far exceeding the table values.[1]

[1] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values.

Decision and Order at 8; Director's Exhibits 8, 11, 21; see Tucker v. Director, OWCP, 10 BLR 1-35 (1987). As the administrative law judge's findings pursuant to Sections 718.304, 718.305,[2] and 718.306 are supported by substantial evidence, we affirm his finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(3).

Lastly, in evaluating the evidence pursuant to Section 718.202(a)(4), the administrative law judge accurately summarized the medical opinions of record, and reasonably accorded little weight to the opinion of Dr. Prasad, who diagnosed pneumoconiosis, since the physician admitted in his report that the laboratory data was not available to him at the time he made his diagnosis. Decision and Order at 7-9; Director's Exhibit 21; see generally Moseley v. Peabody Coal Co., 769 F.2d 357, 8 BLR 2-22 (6th Cir. 1985); Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). The administrative law judge, within his discretion, gave greater weight to

[2] We note that the administrative law judge did not render separate findings pursuant to 20 C.F.R. §718.204(c)(3) and (c)(4); however, inasmuch as the record contains no evidence of cor pulmonale with right-sided congestive heart failure, and in light of the administrative law judge's findings regarding the medical opinion evidence of record pursuant to 20 C.F.R. §718.202(a)(4), discussed infra, we hold that this omission constitutes harmless error. See Larioni v. Director, OWCP, 6 BLR 1-1276 (1984).

the opinion of Dr. Kuziak, who diagnosed no clinical evidence for chronic pulmonary disease and noted that claimant's condition was not related to coal mine employment, and the opinion of Dr. Lewis, who diagnosed a mild restrictive lung disease unrelated to coal mine employment, because these opinions were supported by objective evidence as well as subjective evidence. Decision and Order at 7-9; Director's Exhibit 9; see Hall v. Director, OWCP, 8 BLR 1-193 (1985); Wetzel v. Director, OWCP, 8 BLR 1-139 (1985); Lucostic, supra. As the administrative law judge's findings pursuant to Section 718.202(a)(4) are supported by substantial evidence, we hereby affirm them.

Inasmuch as claimant has failed to establish a requisite element of entitlement pursuant to Part 718, i.e., the existence of pneumoconiosis, entitlement thereunder is precluded. See Trent, supra. Consequently, we affirm the administrative law judge's finding that claimant is not entitled to benefits, and we need not address the Director's arguments regarding whether the administrative law judge erred in dismissing employers and the carrier as parties to this action.

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge