

BRB No. 95-0482 BLA

SAMUEL L. HENSLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
E & R TRUCKING 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 Fletcher E. Campbell, Jr.,
Administrative Law Judge, United States Department of Labor.

Samuel L. Hensley, Jonesville, Virginia, *pro se*.

William P. Swain (Boehl Stopher & Graves), Louisville, Kentucky, for
employer.

Before: SMITH, DOLDER, and McGRANERY, Administrative Appeals
Judges.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order

¹ Claimant is Samuel L. Hensley, the miner, who filed an application for benefits on November 24, 1992. Director's Exhibit 1. Ron Carson, a benefits counselor with Stone Mountain Health Services of Jonesville, Virginia, requested an appeal on behalf of claimant but is not representing him on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, BRB No. 94-3940 BLA (May 19, 1995) (Order).

(94-BLA-0090) of Administrative Law Judge Fletcher E. Campbell, 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 credited claimant with thirteen years of coal mine employment and found that he has two dependents for purposes of augmentation of benefits. The administrative law judge found the evidence insufficient to

establish the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §§718.202(a), 718.204(c) and, accordingly, denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in 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 Co.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. § 921(b)(3), as incorporated into the Act by 30 U.S.C. § 932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to benefits under 20 C.F.R. Part 718, claimant must demonstrate 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 one 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).

Pursuant to Section 718.202(a)(1)-(3), the administrative law judge correctly noted that the three x-ray readings of record are negative for pneumoconiosis, there is no biopsy evidence in the record, and the presumptions listed at Sections 718.304, 718.305, and 718.306 are inapplicable to this claim.³ Decision and Order at 4-5; Director's Exhibits 19, 20, 33. Substantial evidence supports these findings, which we therefore affirm.

At Section 718.202(a)(4), the administrative law judge considered both

² We affirm as unchallenged on appeal the administrative law judge's findings regarding the length of coal mine employment and the number of dependents. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

³ Regarding the applicability of the presumptions, we note that the record contains no evidence of complicated pneumoconiosis, this claim was filed after January 1, 1982, Director's Exhibit 1, and claimant is a living miner. See 20 C.F.R. §§718.304, 718.305, 718.306.

medical opinions of record and found that the "reports either rule out or ignore the possibility of pneumoconiosis," concluding that neither contained a diagnosis of pneumoconiosis. Decision and Order at 5. Dr. Paranthaman diagnosed "asthmatic bronchitis" aggravated by claimant's cigarette smoking, stating that "[i]t is unlikely that coal dust exposure in truck driving is [a] significant cause." Director's Exhibit 17 (emphasis in original). Dr. Forehand diagnosed "obstructive airways disease . . . worsened by exertion, and, historically, by dusty conditions."⁴ Director's Exhibit 33 at 2.

The administrative law judge acted within his discretion as fact-finder in concluding that neither report establishes the existence of pneumoconiosis, see *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984), since neither physician related the respiratory impairment diagnosed to coal dust exposure. See 20 C.F.R. §718.201; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*); cf. *Southard v. Director, OWCP*, 732 F.2d 66, 6 BLR 2-26 (6th Cir. 1984). Thus, we affirm the administrative law judge's finding that the medical opinions fail to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Because claimant has failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a necessary element of entitlement under Part 718, we affirm the denial of benefits. See *Trent, supra*; *Perry, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

_____NANCY S.
DOLDER
Administrative Appeals Judge

⁴ In the "History" section of his report, Dr. Forehand had noted that "exertion, gases, fumes, and particulate irritants aggravate his symptoms." Director's Exhibit 33 at 1.

REGINA C.
McGRANERY
Administrative Appeals Judge