

BRB No. 96-1772 BLA

HERSHEL HELTON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
P & R COAL COMPANY)	
)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Party-in-Interest)	

Appeal of the Decision and Order of Vivian Schreter-Murray, Administrative Law Judge, United States Department of Labor.

Hershel Helton, Honaker, Virginia, *pro se*.

Michael F. Blair (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order (95-BLA-2102) of Administrative Law Judge Vivian Schreter-Murray 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

¹ Claimant is Hershel Helton, the miner, who filed this application for benefits on September 2, 1994. Director's Exhibit 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. White is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

credited claimant with “a minimum” of twenty-five years of coal mine employment pursuant to the parties' stipulation, Decision and Order at 1, but concluded that the medical evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, she denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance. 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled 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), the administrative law judge considered all twenty-three readings of the six x-rays of record. There were twenty negative readings and three positive readings. Director's Exhibits 17, 18, 27, 30, 33-39; Employer's Exhibits 1-7, 10, 11. All of the interpretations were by physicians possessing radiological credentials. The administrative law judge permissibly found that the "preponderance of the x-ray interpretation[s] provided by the most highly qualified experts" was negative for the existence of pneumoconiosis. Decision and Order at 3; see *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). Substantial evidence supports the administrative law judge's finding. We therefore affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

The administrative law judge made no findings pursuant to Section 718.202(a)(2)

² We affirm as unchallenged on appeal the administrative law judge's finding regarding the length of coal mine employment. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Director's Exhibits 2,4; Hearing Transcript at 6.

and (3). We note, however, that the record contains no biopsy evidence and the presumptions at Sections 718.304, 718.305, and 718.306 are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. See 20 C.F.R. §§718.304, 718.305, 718.306.

Pursuant to Section 718.202(a)(4), the administrative law judge discussed all four medical opinions of record in light of the physicians' qualifications. Decision and Order at 3-5. In finding that the existence of pneumoconiosis was not established, the administrative law judge permissibly relied on "the unanimity of opinion among the best qualified medical experts . . . that [claimant] does not have pneumoconiosis. . . ." Decision and Order at 5. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Substantial evidence supports the administrative law judge's finding. Drs. Sargent, Fino, and Castle, who the administrative law judge correctly noted are Board-certified in internal and pulmonary medicine, concluded that claimant does not have pneumoconiosis, but rather, suffers from obstructive lung disease due to smoking,³ while only Dr. Forehand, who is Board-certified in pediatrics and immunology, diagnosed pneumoconiosis. Compare Director's Exhibit 39; Employer's Exhibits 12, 13, with Director's Exhibit 14. Inasmuch as the administrative law judge considered all of the relevant evidence and permissibly relied on the weight of the "well reasoned" opinions by "Board[-]certified pulmonary specialists," Decision and Order at 5; see *Clark, supra*, we affirm her finding 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, the denial of benefits is affirmed. See *Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

³ Dr. Sargent examined claimant and administered objective tests, while Drs. Fino and Castle reviewed the medical evidence. Director's Exhibit 39; Employer's Exhibits 12, 13.

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

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge