BRB No. 96-1775 BLA

KYLE E. HALL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CLINCHFIELD 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 Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Kyle E. Hall, Coeburn, Virginia, *pro se*.[1]

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

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

PER CURIAM:

[1] Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, 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* 20 C.F.R. §§802.211(e); 802.220; *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995).

Claimant,[2] without the benefit of counsel, appeals the Decision and Order Denying Benefits (95-BLA-1883) of Administrative Law Judge Pamela Lakes Wood on a duplicate 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 administrative law judge concluded that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203, and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge found that the evidence was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d), and she denied the claim.

In an appeal filed by a claimant 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 findings are supported by substantial evidence, and accordingly, it urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter,

[2] Claimant is Kyle Hall, the miner, who filed three applications for benefits with the Department of Labor (DOL). He filed the first claim on March 11, 1980, which was denied by DOL on February 2, 1981. Director's Exhibit 17. Claimant took no further action on this claim following the denial. Claimant then filed a second claim on April 17, 1989, which was denied by DOL on June 8, 1989. Director's Exhibit 18. Claimant took no further action on this claim following the denial. Claimant then filed the instant duplicate claim on February 6, 1995. Director's Exhibit 1.

indicating that he will not respond to the instant appeal.[3]

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 of pneumoconiosis pursuant to Section 718.202(a). The administrative law judge accurately summarized seventeen interpretations of six x-rays, Decision and Order at 6-7, 11, and then concluded that all of the interpretations were negative for pneumoconiosis. She correctly found that this evidence was insufficient to establish a material change in conditions and the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See Worhach v. Director, OWCP*, 17 BLR 1-105(1993); *Trent, supra*.

The administrative law judge correctly concluded that the record did not contain any autopsy or biopsy evidence, such that Section 718.202(a)(2) could not be established. Moreover, the administrative law judge correctly concluded that none of the presumptions contained in Section 718.202(a)(3) were applicable.

In considering the medical opinion evidence, the administrative law judge found that Dr. Kanwal, Director's Exhibits 5, 6, 17 opined that claimant had pneumoconiosis but that Dr. Sargent, Employer's Exhibit 18, opined that he did not have coal workers' pneumoconiosis. Decision and Order at 12. She then permissibly credited Dr. Sargent's opinion on the basis that it was better supported by the objective evidence of record and Dr. Sargent possessed superior qualifications, Decision and Order at 12; *see Justice v. Director, OWCP*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); Perry v. Director, OWCP, 9 BLR 1-1(1986). Decision and Order at 12. *Worhach, supra; Trent, supra*. We affirm, therefore, the administrative law judge's determinations that the evidence fails to establish a material change in conditions or the existence of pneumoconiosis at Section 718.202(a)(1)-(4), as they are supported by substantial

[3] Inasmuch as the administrative law judge's findings that the evidence establishes at least 21 years of qualifying coal mine employment, and that employer is properly designated as the putative responsible operator, Decision and Order at 2, are not challenged on appeal and are not adverse to claimant, they are affirmed. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

evidence.

The administrative law judge also relied upon her finding at Section 718.202(a) and found that the evidence was insufficient to establish that pneumoconiosis arose out of coal mine employment at Section 718.203. Decision and Order at 12-13. As we have affirmed the administrative law judge's determination, regarding the existence of pneumoconiosis, we affirm the administrative law judge's finding with respect to Section 718.203 on the same basis.

At Section 718.204(c)(1), the administrative law judge correctly found that all three pulmonary function studies of record produced non-qualifying values.[4] Director's Exhibits 17, 18; Employer's Exhibit 18. Further, the administrative law judge also correctly found that all four blood gas studies of record produced non-qualifying values pursuant to Section 718.204(c)(2). Director's Exhibits 7, 17, 18; Employer's Exhibit 18. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Corp.*, 10 BLR 1-19 (1987); *Tucker v. Director v. OWCP*, 10 BLR 1-35 (1987); *Winchester v. Director v. OWCP, 9 BLR 1-177 (1986)*. Pursuant to Section 718.204(c)(3), the administrative law judge correctly found that the evidence contains no evidence of cor pulmonale with right-sided congestive heart disease. *See Newell v. Freeman United Coal Corp.*, 13 BLR 1-37 (1987).

Regarding Section 718.204(c)(4), the administrative law judge found that two doctors submitted medical opinions. She found that both Drs. Kanwal and Sargent concluded that claimant was not totally disabled by a respiratory or pulmonary impairment. Decision and Order at 14.[5] As the administrative law judge's finding that these opinions are legally insufficient to sustain claimant's burden of establishing total respiratory disability at Section 718.204(c)(4) is supported by substantial evidence, it is affirmed. *See Beatty v. Danri Corp.*, 16 BLR 1-11 (1991), *aff'd* 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995); *Gee v. W. G. Moore & Sons*, 9 BLR 1-4 (1986). We affirm, therefore, the administrative law judge's finding at Section 718.204(c), as it is supported by substantial evidence and is in accordance with applicable law. We affirm, therefore, the administrative law judge's finding

[4] As used herein, "qualifying" indicates a test result adequate to demonstrate total disability under the applicable tables found at 20 C.F.R. Part 718, Appendices B, C. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

[5] The record also contains an opinion by Dr. Pfoff, Director's Exhibit 18, that there was no objective evidence of an impairment. *Id*.

that the evidence of record fails to establish a material change in conditions pursuant to Section 725.309(d), and all of the elements of entitlement. *See Lisa Lee Mines v. Director, OWCP*, 86 F. 3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc)*, *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). As this finding precludes entitlement pursuant to the Part 718 regulations, *see Trent, supra*; *Perry, supra*, we affirm the denial of benefits.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge