

BRB No. 97-0495 BLA

CLINARD ADKINS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
C & D 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 Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Clinard Adkins, Rockhouse, Kentucky, *pro se*.

Denise M. Davidson (Barrett, Haynes, May, Carter & Roarke, P.S.C.), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant<sup>1</sup>, without the benefit of counsel, appeals the Decision and Order - Denying Benefits (95-BLA-1980) of Administrative Law Judge Paul H. Teitler 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 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), and that the evidence failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied the claim.

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<sup>1</sup> Claimant is Clinard Adkins, the miner, who filed his application for benefits with the Department of Labor (DOL) on December 21, 1992. Directors Exhibit 1.

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 finding that the evidence fails to establish entitlement 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 (the Director), has filed a letter indicating that he will not file a brief in the instant case.<sup>2</sup>

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 50 interpretations of eighteen x-rays, Decision and Order at 5-6, and then permissibly concluded that the vast preponderance of interpretations by B-readers and Board-certified radiologists were negative for pneumoconiosis and thereby were insufficient to establish the existence of pneumoconiosis. See *Worhach v. Director, OWCP*, 17 BLR 1-105(1993); *Trent, supra*; Decision and Order at 6-7. Inasmuch as the administrative law judge's finding that the x-rays of record are negative for pneumoconiosis is supported by substantial evidence, we affirm the administrative law judge's finding at Section 718.202(a)(1).

The administrative law judge correctly concluded that the record did not contain any

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<sup>2</sup> Inasmuch as the administrative law judge's findings that the evidence establishes 22 years of qualifying coal mine employment, and that employer is properly designated as the putative responsible operator, Decision and Order at 4, are not adverse to claimant, these findings are affirmed as unchallenged on appeal. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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. 20 C.F.R. §§718.304, 718.305, 718.305. We affirm, therefore, the administrative law judge's findings pursuant to Sections 718.202(a)(2) and (a)(3).

The administrative law judge concluded further that the medical opinion evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). The administrative law judge correctly found that Drs. Clarke, Musgrave, and Wells opined that claimant suffered from pneumoconiosis. Decision and Order at 11. He then permissibly credited the opinions of Drs. Broudy, Lane, Dahhan, Fino, Vuskovich and Wright on the basis of excellent credentials and that they were better supported by the objective evidence of record. *Id*; see *Justice v. Director, OWCP*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Perry, supra*. Decision and Order at 11; see *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach, supra*; *Trent, supra*. The administrative law judge, however, failed to weigh the opinion of Dr. Branscomb. Employer's Exhibit 1. Inasmuch as Dr. Branscomb opined that claimant did not have coal workers' pneumoconiosis or any other occupationally related disease, his opinion is insufficient, therefore, to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), and the administrative law judge's failure to consider Dr. Branscomb's opinion constitutes harmless error. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *Cregger v. U.S. Steel Corp.*, 6 BLR 1-1219 (1984). We affirm, therefore, the administrative law judge's determinations that the evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1)-(4), as they are supported by substantial evidence. 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