BRB No. 97-0546 BLA

DOUGLAS M. GOOSLIN, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BETHANY COAL COMPANY, INCORPORATED (a/k/a GUYANA RESOURCE, INCORPORATED)	)	
	)	DATE ISSUED:
and	)	
	)	
POND CREEK MINING COMPANY	)	
	)	
Employers-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Douglas M. Gooslin, Jr., McCarr, Kentucky, *pro se*.

John W. Walters (Jackson & Kelly), Lexington, Kentucky, for employer, Pond Creek Mining Company.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (95-BLA-2228) of Administrative Law Judge Ainsworth H. Brown 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). After crediting claimant with at least fifteen years of coal mine employment, the administrative law judge found the evidence insufficient

to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Pond Creek Mining Company responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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 Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

In his consideration of whether the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge accurately noted that the record contains twenty-six interpretations of x-rays taken on January 24, 1994, August 16, 1995, December 21, 1995, and March 12, 1996. Decision and Order at 6-7. Of these twenty-six interpretations, the administrative law judge correctly stated that twenty-two are negative for pneumoconiosis. *Id.* at 7. Regarding the interpretations of each x-ray, the administrative law judge properly found that the "weight of the readings of the January 24, 1994 x-ray is negative for pneumoconiosis."[1] *Id.* Next, the administrative law judge, noting that the best qualified physicians had rendered both

[1]Although the administrative law judge accurately stated that no B reader interpreted claimant's January 24, 1994 x-ray as positive for pneumoconiosis, Decision and Order at 7, we note that Dr. Lim, who rendered a positive interpretation of claimant's January 24, 1994 x-ray, is a Board-certified radiologist. Director's Exhibit 20. The Board has taken official notice that the qualifications of a Board-certified radiologist are at least comparable, if not superior, to that of a B reader. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Consequently, Dr. Lim's credentials as a Board-certified radiologist render him at least as qualified as a B reader. However, inasmuch as eight physicians dually qualified as B readers and Board-certified radiologists interpreted claimant's January 24, 1994 x-ray as negative for pneumoconiosis, Director's Exhibits 17, 18; Employer's Exhibits 10, 15, 19, 20, the administrative law judge properly found that the "weight of the readings of the January 24, 1994 x-ray is negative for pneumoconiosis." Decision and Order at 7.

positive and negative interpretations of claimant's August 16, 1995 x-ray,[2] properly found that the readings of this x-ray were "in equipoise." *Id.* Finally, the administrative law judge correctly stated that claimant's December 21, 1995 and March 12, 1996 x-rays were uniformly interpreted as negative for pneumoconiosis. Decision and Order at 7; Employer's Exhibits 2, 4, 8, 12, 21-23, 25-27. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Since the record does not contain any biopsy or autopsy evidence, the administrative law judge properly found that claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 7-8. Furthermore, the administrative law judge properly found that claimant is not entitled to any of the statutory presumptions arising under 20 C.F.R. §718.202(a)(3). *Id.* at 8. Because there is no evidence of complicated pneumoconiosis in the record, the Section 718.304 presumption is inapplicable. *See* 20 C.F.R. §718.304. The Section 718.305 presumption is inapplicable because claimant filed the instant claim after January 1, 1982. *See* 20 C.F.R. §718.305(e). Finally, inasmuch as the instant claim is not a survivor's claim, the Section 718.306 presumption is also inapplicable. *See* 20 C.F.R. §718.306.

[2]Dr. Aycoth, a B reader, and Dr. Mathur, a B reader and Board-certified radiologist, interpreted claimant's August 16, 1995 x-ray as positive for pneumoconiosis. Claimant's Exhibits 1, 2. Drs. Wiot, Spitz and Shipley, each dually qualified as a B reader and Board-certified radiologist, interpreted this x-ray as negative for pneumoconiosis. Employer's Exhibits 18, 20.

In his consideration of whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge acted within his discretion in according less weight to Dr. Agas' opinion because he failed to explain the basis for his finding that claimant suffered from pneumoconiosis. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 12; Director's Exhibit 3. The administrative law judge also properly credited the opinions of Drs. Dahhan and Castle that claimant did not suffer from pneumoconiosis over Dr. Sundaram's contrary opinion because they based their respective opinions upon more comprehensive documentation.[3] *See Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); Decision and Order at 12; Director's Exhibit 14; Claimant's Exhibit 3; Employer's Exhibits 2, 23, 31, 32. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, *supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

[3]Inasmuch as the administrative law judge provided a proper basis for crediting the opinions of Drs. Dahhan and Castle, we need not address the reasons which the administrative law judge provided for discrediting Dr. Sundaram's opinion. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

NANCY S. DOLDER
Administrative Appeals Judge