

BRB No. 05-0552 BLA

CHARLES O. SKIDMORE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 11/30/2005
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Charles O. Skidmore, Mount Gay, West Virginia, *pro se*.

Jeffrey S. Goldberg (Howard Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order – Denying Benefits (2003-BLA-6714) of Administrative Law Judge Richard A. Morgan rendered 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). Based on the date of filing, June 12, 2001, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and credited claimant with at least two years of coal mine employment. The administrative law judge further found that, although the evidence established a totally disabling respiratory impairment, it failed to establish the existence of pneumoconiosis, that pneumoconiosis arose out of coal mine employment, or that pneumoconiosis was totally disabling. 20 C.F.R. §§718.202(a)(1)-(4), 718.203(a), 718.204(c). Accordingly, benefits were denied.

On appeal, claimant generally contends that he is entitled to benefits. The Director, Office of Workers' Compensation Programs, (the Director) responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. See 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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge's Decision and Order denying benefits is rational, supported by substantial evidence, and in accordance with law. It is therefore, affirmed.

Pursuant to Section 718.202(a)(1), the administrative law judge found that the x-ray evidence of record, consisting of a positive reading and a negative reading of the August 29, 2001 film by equally qualified readers, was in equipoise and did not, therefore, satisfy claimant's burden of establishing the existence of pneumoconiosis. This was rational. Decision and Order - Denying Benefits at 4, 7; Claimant's Exhibit 1; Director's Exhibit 23; 20 C.F.R. §718.202(a)(1); *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Simpson v. Director, OWCP*, 9 BLR 1-99, 1-100 (1986); *Isaacs v. Bailey Mining Co.*, 7 BLR 1-62, 1-63 n.2 (1984).¹ We also affirm the administrative law judge's finding that the requirements of Section 718.202(a)(2)-(3) were not met, as the record contained no

¹ Since the miner's last coal mine employment took place in the State of West Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. Director's Exhibit 3; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

biopsy evidence, and the regulatory presumptions contained at 20 C.F.R. §§718.304, 718.305, 718.306, were inapplicable to this living miner's claim filed after January 1, 1982, in which there was no evidence of complicated pneumoconiosis. Decision and Order - Denying Benefits at 7; Director's Exhibit 2; 20 C.F.R. §718.202(a)(2), (3).

Regarding the medical opinion evidence pursuant to Section 718.202(a)(4), the administrative law judge permissibly found that Dr. Mullins's September 26, 2001 report was entitled to no weight as it was equivocal, conflicting, and poorly reasoned regarding the existence of pneumoconiosis. Director's Exhibits 10, 23. The administrative law judge noted that Dr. Mullins's statement: that the absence of radiological evidence of pneumoconiosis precludes any relationship between coal dust exposure and a respiratory impairment, was contrary to the Act and regulations. Decision and Order - Denying Benefits at 7; Director's Exhibit 23; *see* 20 U.S.C. §923(b); 20 C.F.R. §§718.201; 718.202(a)(1)-(4); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Clinchfield Coal Co. v. Fuller*, 180 F.3d 622, 21 BLR 2-654 (4th Cir. 1999); *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Nance v. Benefits Review Board*, 861 F.2d 68, 12 BLR 2-31 (4th Cir. 1988); *see also Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988).

The administrative law judge also acted within his discretion in finding that Dr. Mullins's October 26, 2004 supplemental report failed to establish the existence of pneumoconiosis because, while Dr. Mullins acknowledged that a claim could not be denied based on a negative x-ray alone, she clearly and unequivocally stated that 100% of claimant's impairment was due to causes other than pneumoconiosis, not because of the negative x-ray reading, but because of claimant's very limited history of exposure to coal dust. Claimant's Exhibit 2; 20 C.F.R. §718.201. Accordingly, the administrative law judge found that Dr. Mullins's second report clearly did not support a finding of clinical or legal pneumoconiosis. Decision and Order - Denying Benefits at 5-8; Claimant's Exhibit 2; 20 C.F.R. §718.201; *Fuller*; 180 F.3d 622, 21 BLR 2-654; *Trumbo*, 17 BLR 1-85; *Clark*, 12 BLR 1-149. The administrative law judge, therefore, found that both opinions by Dr. Mullins were insufficient to satisfy claimant's burden of proof at this Section. *Ondecko*, 512 U.S. 267, 18 BLR 2A-1.

In addition, considering the conflicting x-ray evidence together with the medical opinion evidence, *i.e.*, the opinions of Dr. Mullins, the only medical opinions of record, the administrative law judge rationally concluded that the evidence failed to establish the existence of pneumoconiosis at Section 718.202(a). *See Ondecko*, 512 U.S. 267, 18 BLR 2A-1; *Compton*, 211 F.3d 203, 22 BLR 2-162.

As we have affirmed the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section

718.202(a)(1)-(4), an essential element of entitlement, we must also affirm the denial of benefits. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1. We need not, therefore, address the sufficiency of the evidence relevant to any other element of entitlement. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Accordingly, the Decision and Order-Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge