BRB No. 97-0649 BLA

DELMA GIBSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	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 Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Delma Gibson, Oakwood, Virginia, *pro se*.[1]

Ronald E. Gilbertson (Kilcullen, Wilson and Kilcullen, Chartered), Washington, D.C., for employer.

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

PER CURIAM:

[1]Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant, but is not representing him on appeal. *See Shelton v. Claude V. Keen Trucking Co.,* 19 BLR 1-88 (1995)(Order).

Claimant, without the assistance of counsel, appeals the Decision and Order (95-BLA-2302) of Administrative Law Judge Mollie W. Neal 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718,[2] the administrative law judge found that claimant failed 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 challenges the administrative law judge's denial of benefits. In response, employer urges affirmance of the denial. The Director, Office of Workers' Compensation Programs, has filed a letter indicating his intention not to participate in this appeal.

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). 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).

After consideration of the Decision and Order and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence, contains no reversible error, and therefore, it is affirmed. Relevant to 20 C.F.R. §718.202(a)(1), the administrative law judge properly concluded that the x-ray evidence is insufficient to establish the existence of pneumoconiosis inasmuch as all eight x-ray interpretations of record are negative for the existence of pneumoconiosis. Decision and Order at 5; Director's Exhibits 18, 21; Employer's Exhibits 1, 3, 6, 8. Relevant to 20 C.F.R. §§718.202(a)(2) and (a)(3), the administrative law judge properly determined that pneumoconiosis was not established inasmuch as the record does not contain any biopsy evidence, *see* 20 C.F.R. §718.202 (a)(2), and this is a living miner's claim filed after January 1, 1982, and the record is devoid of evidence of complicated pneumoconiosis, *see* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305 and 718.306. Decision and Order at 5. Hence, we affirm the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(2) and (a)(3). Turning to the administrative law judge's consideration of the medical opinion evidence under 20 C.F.R. §718.202(a)(4), we note that there are three physicians' reports of record. Drs. Forehand, Shoukry, and Hippensteel unequivocally opined that claimant does not suffer from coal workers' pneumoconiosis. Director's Exhibit 13; Employer's Exhibits 3, 10. After considering the opinions of Drs. Forehand and Shoukry, the administrative law judge found the medical opinion evidence fails to establish pneumoconiosis. Decision and Order at 6. Although the administrative law judge failed to address Dr. Hippensteel's opinion, Employer's Exhibit 10, we deem this error harmless inasmuch as Dr. Hippensteel's opinion that claimant does not suffer from coal workers'

[2]Claimant filed his application for benefits on February 17, 1991. Director's Exhibit 1.

pneumoconiosis not only corroborates the opinions of Drs. Forehand and Shoukry, but also supports the administrative law judge's determination that pneumoconiosis is not established under Section 718.202(a)(4). *See Larioni v. Director, OWCP,* 6 BLR 1-1276 (1984). We, therefore, affirm the administrative law judge's finding under 20 C.F.R. §718.202(a)(4).

Inasmuch as claimant failed to satisfy his burden of affirmatively establishing the existence of pneumoconiosis at 20 C.F.R. §718.202(a), a requisite element of entitlement under Part 718, we affirm the administrative law judge's finding that claimant is not entitled to benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge