

BRB No. 02-0392 BLA

CHESTER HONEYCUTT)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED:
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Chester Honeycutt, Robbins, Tennessee, *pro se*.

Mary Forrest-Doyle (Eugene Scalia, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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: SMITH, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (01-BLA-0975) of Administrative Law Judge John C. Holmes 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).¹ The administrative law judge credited claimant with approximately thirty-eight years of qualifying coal mine employment, and adjudicated this claim, filed on December 16, 1999, pursuant to the provisions at 20 C.F.R.

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Part 718, but found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Worker' Compensation Appeals (the Director), responds, urging affirmance.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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 filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of 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; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to prove any of these requisite elements compels a denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).²

Initially, based on the facts of the instant case, we hold that there was a valid waiver of claimant's right to be represented by an attorney, *see* 20 C.F.R. §725.362(b), and that the administrative law judge provided claimant with a full and fair hearing. *See Shapell v. Director, OWCP*, 7 BLR 1-304 (1984); Hearing Transcript at 4-5.

²This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in the State of Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence, consistent with applicable law, and must be affirmed. The administrative law judge properly found that the evidence of record was insufficient to establish either clinical or legal pneumoconiosis under the regulatory definition thereof. *See* 20 C.F.R. §718.201; Decision and Order at 3. The administrative law judge accurately determined that all of the x-ray evidence of record was interpreted as negative for pneumoconiosis. Thus claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 2-3; Director's Exhibits 15, 17, 23, 25, 27; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Trent, supra*; *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge further properly found that claimant did not establish the existence of pneumoconiosis at Section 718.202(a)(2), (3), as the record contains no autopsy or lung biopsy evidence, and the presumptions at 20 C.F.R. §§718.304, 718.305 and 718.306 are not applicable.³ Decision and Order at 3; *see Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Lastly, claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as the administrative law judge correctly determined that none of the physicians of record diagnosed pneumoconiosis or any respiratory or pulmonary impairment related to dust exposure in coal mine employment.⁴ 20 C.F.R. §718.201; *Langerud, supra*; Decision and Order at 2-3; Director's Exhibits 13, 22, 23, 25. The administrative law judge's findings pursuant to Section 718.202(a)(1)-(4) are supported by substantial evidence and thus are affirmed. Furthermore, since the determination of whether claimant has pneumoconiosis is

³The presumption at 20 C.F.R. §718.304 requires evidence of complicated pneumoconiosis, which is not contained in this record; the presumption at 20 C.F.R. §718.305 does not apply to claims, such as this, which were filed on or after January 1, 1982; and the presumption at 20 C.F.R. §718.306 does not apply to claims filed by living miners.

⁴Dr. Seargeant reported no findings consistent with a diagnosis of pneumoconiosis, and although the physician indicated that claimant may have a mild chronic obstructive pulmonary disease (COPD), no etiology was provided for that condition. Decision and Order at 3; Director's Exhibit 13. Dr. Smith also diagnosed COPD without indicating its etiology, Decision and Order at 2-3; Director's Exhibit 22, while Dr. Hughes attributed claimant's COPD to smoking. Decision and Order at 2-3; Director's Exhibit 23. Dr. Dahhan explicitly found no pneumoconiosis, but diagnosed chronic obstructive lung disease resulting from smoking. Director's Exhibit 25. Although the Director accurately notes that the administrative law judge failed to address Dr. Dahhan's opinion and incorrectly stated that Dr. Smith attributed claimant's COPD to smoking, Decision and Order at 3, Director's Brief at 6, the administrative law judge's errors are harmless because both medical opinions are insufficient to support a finding of pneumoconiosis as defined at 20 C.F.R. §718.201. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

primarily a medical determination, claimant's testimony, under the circumstances of this case, could not alter the administrative law judge's findings and therefore could not satisfy claimant's burden of proof on this issue. 20 C.F.R. §718.202(a)(4); *Anderson, supra*.

Because claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement, claimant is precluded from entitlement to benefits. *See Anderson, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge