BRB No. 97-0739 BLA

TROY J. BRYANT Claimant-Petitioner v. WESTMORELAND COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order of Frederick D. Neusner, Administrative Law Judge, United States Department of Labor.

Troy J. Bryant, Big Stone Gap, Virginia, *pro se*.[1]

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (96-BLA-1318) of Administrative Law Judge Frederick D. Neusner 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 thirty-three 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,

[1]Ron Carson, a benefits counselor with Stone Mountain Health Services in St. Charles, 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 generally contends that the administrative law judge erred in denying benefits. Employer 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 all of the x-ray interpretations of record are negative for pneumoconiosis.[2] Decision and Order at 3; Director's Exhibits 12, 13; Employer's Exhibits

[2]The administrative law judge stated that Dr. Subramanian interpreted claimant's October 21, 1994 x-ray as negative for pneumoconiosis. Decision and Order at 3. Because the record does not contain any x-ray interpretations rendered by Dr. Subramanian, the administrative law judge appears to be referring to Dr. Paranthaman's negative interpretation of claimant's October 21, 1994 x-ray. *See* Director's Exhibit 12. The administrative law judge also incorrectly stated that Dr. Pendergrass rendered a negative interpretation of claimant's June 13, 1996 x-ray. Decision and Order at 3. Dr. Pendergrass actually rendered a negative interpretation of claimant's October 21, 1994 x-ray. *See* Employer's Exhibit 4. However, inasmuch as the record does not contain any positive x-ray interpretations, the administrative law judge's errors in describing the x-ray

1-5. We, therefore, affirm the administrative law judge's finding that the 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 3. 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.* 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.

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 considered the opinions of Drs. Paranthaman and Dahhan. Dr. Paranthaman diagnosed chronic bronchitis caused by coal dust exposure, a diagnosis sufficient to support a finding of pneumoconiosis, s*ee* 20 C.F.R. §718.201, Director's Exhibits 10, 15, while Dr. Dahhan opined that claimant did not suffer from coal workers' pneumoconiosis. Employer's Exhibits 1, 6. After finding that Dr. Dahhan's opinion was not sufficiently reasoned, the administrative law judge concluded that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 5.

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evidence are harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

We initially note that the administrative law judge did not provide any basis for discrediting Dr. Paranthaman's finding of pneumoconiosis. Moreover, the administrative law judge failed to adequately explain his basis for finding Dr. Dahhan's opinion regarding the existence of pneumoconiosis to be unreasoned. Dr. Dahhan explained that his opinion that claimant did not suffer from coal workers' pneumoconiosis was based upon a normal clinical examination of claimant's chest, and a negative chest x-ray. Employer's Exhibit 1. Although Dr. Dahhan diagnosed a mild ventilatory impairment, he explained that it was due to claimant's "significant obesity" and congestive heart failure. *Id.* Dr. Dahhan further indicated that these were conditions not related to the inhalation of coal mine dust.[3] *Id.* In light of these errors, we vacate the administrative law judge's finding and remand the case to the administrative law judge to reconsider all the relevant medical evidence pursuant to 20 C.F.R. §718.202(a)(4).[4]

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

[3]There is no indication that the administrative law judge considered Dr. Dahhan's September 23, 1996 deposition testimony. *See* Employer's Exhibit 6. During his deposition, Dr. Dahhan reiterated that claimant's impairment was attributable to his obesity and cardiac condition and that neither of these conditions were related to his occupation. *Id.*

[4]The administrative law judge, in his consideration of the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4), additionally failed to address the opinions of Drs. Fino and Jarboe. Drs. Fino and Jarboe each opined that claimant did not suffer from coal workers' pneumoconiosis. *See* Employer's Exhibit 5.

REGINA C. McGRANERY
Administrative Appeals Judge