

LUTHER GRIFFITH)
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 Claimant-Petitioner)
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 v.)
)
 G. KING ENTERPRISES)
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 and)
)
 COBB COAL COMPANY)
)
 Employers-)
 Respondents)
)
)
 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 James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Luther Griffith, Lynn, Alabama, *pro se*.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (94-BLA-2520) of Administrative Law Judge James W. Kerr, Jr. 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). The

¹Claimant is Luther Griffith, the miner, whose first claim for benefits, filed on December 16, 1971, was denied on November 15, 1979. Director's Exhibit 34.

administrative law judge credited claimant with at least fourteen years of qualifying coal mine employment, and found a material change in conditions established pursuant to 20 C.F.R. §725.309. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), and accordingly, denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.²

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. *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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 718.202(a)(1), the record contains eleven interpretations of five x-rays, only one of these interpretations is positive for the existence of pneumoconiosis. Director's Exhibits 12-16, 34; Claimant's Exhibit 1; Employer's Exhibit 2. The administrative law judge permissibly found that the weight of

²We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment and responsible operator status and pursuant to Section 725.309. See *Coen; Skrack*.

the x-ray evidence is negative for the existence of pneumoconiosis.

Decision and Order at 7; see *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). Therefore, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(1).

There is no autopsy or biopsy evidence in the record in this case; thus, the existence of pneumoconiosis cannot be established pursuant to 20 C.F.R. §718.202(a)(2). Also, the existence of pneumoconiosis cannot be established pursuant to 20 C.F.R. §718.202(a)(3) inasmuch as there is no evidence of complicated pneumoconiosis in this living miner's claim filed after January 1, 1982, and claimant has not established fifteen or more years of coal mine employment. See 20 C.F.R. §§718.304, 718.305, 718.306(a).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinions of eleven physicians. Director's Exhibits 10, 34; Employer's Exhibits 1-3; Claimant's Exhibit 2. Noting that only Drs. Wilson, Manasco, and Cross diagnosed pneumoconiosis, the administrative law judge permissibly found Dr. Cross' opinion to be equivocal and ambiguous. Decision and Order at 13; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986). The administrative law judge then accorded the most weight to the opinions of Drs. Hasson and Branscomb that there was no evidence of lung disease related to coal mine dust, because the latter opinions were well reasoned and documented and most consistent with the objective evidence of

record. Decision and Order at 13; see *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel, supra*; see also *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993). Thus, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).

Further, as claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *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.