

BRB No. 05-0921 BLA

ROGER G. DONNELLY)
)
 Claimant-Petitioner)
)
 v.)
)
 CLINCHFIELD COAL COMPANY) DATE ISSUED: 04/27/2006
)
 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 Linda S. Chapman,
Administrative Law Judge, United States Department of Labor.

Roger G. Donnelly, Shady Valley, Tennessee, for claimant, *pro se*.

Tracey Alice Berry (Penn, Stuart, & Eskridge), Abingdon, Virginia, for
employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (04-BLA-6494) of
Administrative Law Judge Linda S. Chapman 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, July 23, 2003, the
administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and found
that claimant established fourteen years of coal mine employment. The administrative
law judge found that the evidence of record was insufficient to establish the existence of
coal workers' pneumoconiosis pursuant to 20 C.F.R. §718.202, or a totally disabling
respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c).
Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the decision as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, (the Director) is not participating 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grills 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*).

Turning first to the administrative law judge's consideration of the x-ray evidence of record pursuant to Section 718.202(a)(1), considering the qualifications of the x-ray readers, she found that the preponderance of the x-ray evidence failed to establish the existence of pneumoconiosis. This was rational. Claimant's Exhibit 2; Employer's Exhibit 5; Director's Exhibits 1, 8-11; Decision and Order Denying Benefits at 4, 11-12; see *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995).¹ Accordingly, we affirm the administrative law judge's finding that the x-ray evidence does not establish the existence of pneumoconiosis. 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 contains no autopsy or biopsy evidence and the regulatory presumptions contained at 20 C.F.R. §§718.304, 718.305, 718.306, are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no credible evidence of complicated pneumoconiosis. Director's Exhibit 2; Decision and Order Denying Benefits at 12; 20 C.F.R. §718.202(a)(2), (3).

¹ Because the miner last worked in Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

Pursuant to Section 718.202(a) (4), the administrative law judge permissibly found that Dr. Girish's August 28, 2003, report entitled to little weight as it was equivocal, failed to provide a rationale for its conclusions, and was not supported by the objective evidence of record, and that Ms. Brook's diagnosis of pneumoconiosis was unpersuasive as she was not a doctor and did not provide a rationale for her findings. Claimant's Exhibit 3; Director's Exhibit 8; Decision and Order Denying Benefits at 13; 20 C.F.R. §718.204(a)(4); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *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); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Similarly, the administrative law judge also rationally accorded little weight to the opinions of the doctors who treated claimant at Mountain Home VAMC (Veterans Administration Medical Center) as their supporting x-rays are not contained in the record and claimant's November 27, 2002 CT scan did not unequivocally show the existence of pneumoconiosis. Director's Exhibit 11; Decision and Order Denying Benefits at 14; *Compton*, 211 F.3d 203, 22 BLR 2-162; *Trumbo*, 17 BLR 1-85; *Justice*, 11 BLR 1-91. Further, considering the opinions of Dr. Hippensteel, who found no evidence of pneumoconiosis, and Dr. Fino, who found nodular changes on claimant's CT scans due to granulomatous changes, possibly pneumoconiosis and obesity, but stated that changes seen were likely due to another granulomatous disease, such as tuberculosis or histoplasmosis, the administrative law judge found that they did not establish the existence of pneumoconiosis. *See Justice*, 11 BLR 1-91. The administrative law judge rationally concluded, therefore, that the evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). Employer's Exhibits 5, 7, 8; Director's Exhibit 9; Decision and Order Denying Benefits at 13-14; *see 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).

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), 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 administrative law judge's findings regarding the other elements of entitlement.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge