

BRB No. 97-1342 BLA

GEORGE S. MILLER)		
)		
Claimant-Petitioner)		
)		
v.)	DATE	ISSUED:
)		
CARBON FUEL COMPANY)		
)		
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 of Henry B. Lasky, Administrative Law Judge, United States Department of Labor.

George S. Miller, Bickmore, West Virginia, *pro se*.

Ann B. Rembrandt (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-1335) of Administrative Law Judge Henry B. Lasky (the administrative law judge) 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 forty years of coal mine employment, the administrative law judge adjudicated this duplicate claim¹ pursuant to the regulations contained in 20 C.F.R. Part

¹Claimant filed his initial claim on July 2, 1984. Director's Exhibit 33. On April 22, 1992, Administrative Law Judge Eric Feirtag issued a Decision and Order denying benefits. *Id.* The basis of Judge Feirtag's denial was claimant's failure to establish the existence of pneumoconiosis. *Id.* The Board affirmed Judge Feirtag's denial. *Miller v. S. P. and E. Coals, Inc.*, BRB No. 92-1609 BLA (Dec. 14, 1993)(unpub.). Inasmuch as claimant did not pursue this claim any further, the denial became final. Claimant filed his most recent claim on December 19, 1994. Director's Exhibit 1.

718. 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 pursuant to 20 C.F.R. §718.204(c). The administrative law judge also concluded that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. See *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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the Decision and Order and the relevant evidence of record, we conclude that the administrative law judge's decision is supported by substantial evidence and contains no reversible error and, therefore, it is affirmed. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), based on his consideration of all of the x-ray evidence of record. Of the twenty-two x-ray interpretations of record, nineteen readings are negative for pneumoconiosis, Director's Exhibits 14, 16, 26-28, 33; Employer's Exhibits 1, 3, and three readings are positive, Director's Exhibits 15, 33. The administrative law judge properly accorded greater weight to the negative x-ray readings provided by physicians with superior qualifications.² See *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Melnick v.*

²Whereas Dr. Deardorff read the July 17, 1990 x-ray as positive for pneumoconiosis, Drs. Leef, Scott and Wheeler read the same x-ray as negative. The administrative law judge stated that while "all [of] the physicians who interpreted the July 17, 1990 X-ray were B-readers as well as Board-certified radiologists...[,] Drs. Scott and Wheeler have been associate professors of radiology at the Johns Hopkins Medical Institutions in Baltimore, for six and 16 years, respectively." Decision and Order at 6. Further, although Dr. Speiden read the October 7, 1991 x-ray as positive for pneumoconiosis, Drs. Shipley, Spitz and Wiot read the same x-ray as negative. The administrative law judge stated that while "the physicians reading the October 7, 1991 X-ray were highly qualified B-readers and Board-certified radiologists...[,] Drs. Shipley and Wiot...have served in academic appointments at the University of Cincinnati College of Medicine." *Id.* at 7. The administrative law judge observed that "Dr. Shipley has acted as an assistant professor of radiology since 1984, and Dr. Wiot has been a full professor of radiology since 1966." *Id.* Finally, whereas Dr. Ranavaya read the February 16, 1995 x-ray as positive for pneumoconiosis, Drs. Francke, Gaziano, Shipley, Spitz and Wiot read the same x-ray as negative. The administrative law

Consolidation Coal Co., 16 BLR 1-31 (1991); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Moreover, since nineteen of the twenty-two x-ray interpretations of record are negative for pneumoconiosis, substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). See *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994).

Next, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) since the record does not contain any biopsy results demonstrating the presence of pneumoconiosis. Decision and Order at 6. In addition, the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. See 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption at 20 C.F.R. §718.305 because he filed his claim after January 1, 1982. See 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim, therefore, the presumption at 20 C.F.R. §718.306 is also inapplicable.

judge observed that "Dr. Ranavaya is a B-reader, but not a Board-certified radiologist, and the record contains no evidence as to his other relevant qualifications." *Id.* The administrative law judge also observed that "Drs. Francke, Wiot, Shipley, and Spitz...are each Board-certified radiologists and B-readers." *Id.*

Further, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered all of the relevant medical opinions of record. Whereas Drs. Gaziano and Lee opined that claimant suffers from pneumoconiosis,³ Director's Exhibits 12, 33, Drs. Crisalli, Sobieski, and Fino opined that claimant does not suffer from pneumoconiosis,⁴ Director's Exhibits 28, 33; Employer's Exhibits 2, 4. The administrative law judge properly accorded determinative weight to the opinions of Drs. Crisalli and Fino over the contrary opinions of Drs. Gaziano and Lee because of their superior qualifications.⁵ See *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Further, the administrative law judge properly accorded greater weight to the opinion of Dr. Fino than to contrary opinions of record because he found Dr. Fino's opinion to be better reasoned and documented.⁶ See *Clark v.*

³Although Dr. Gaziano, in a report dated August 30, 1984, opined that claimant suffers from chronic bronchitis related to coal dust exposure, Director's Exhibit 33, Dr. Gaziano subsequently opined that claimant does not suffer from a cardiopulmonary condition, Director's Exhibit 12.

⁴The administrative law judge, citing *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995), discounted Dr. Sobieski's opinion, that claimant does not suffer from coal workers' pneumoconiosis, because he found "that the premise underlying [Dr. Sobieski's] opinion is hostile to the Act." Decision and Order at 10; Director's Exhibit 33.

⁵The administrative law judge stated "that Drs. Crisalli and Fino are highly qualified physicians with academic appointments." Decision and Order at 11. The administrative law judge observed that "Dr. Crisalli is Board-certified in internal medicine and pulmonary diseases, and serves as a clinical assistant professor in the Department of Medicine at West Virginia University." *Id.* at 8-9. Additionally, the administrative law judge observed "that Dr. Fino is...Board-certified in internal medicine and pulmonary diseases, and is an assistant clinical professor of pulmonary medicine at the University of Pittsburgh." *Id.* at 10. Further, the administrative law judge stated "that the record reveals nothing of Dr. Lee's qualifications." *Id.* While the record does indicate that Dr. Gaziano is a B-reader, the record does not indicate that Dr. Gaziano has any qualifications which are relevant to the weighing of the evidence under 20 C.F.R. §718.202(a)(4). Director's Exhibits 14, 33.

⁶The administrative law judge observed "that Dr. Fino's reports are particularly distinguished by their specificity and the thoroughness of their analysis of the medical evidence." Decision and Order at 11. In contrast, the administrative law judge observed that Dr. Gaziano's "rationale, which appears to consist of one word with approximately six letters, is illegible." *Id.* at 8. Moreover, the administrative law judge observed that "Dr. Gaziano's opinion does not identify the objective medical evidence upon which he relied in rendering his diagnosis of chronic bronchitis related to occupational dust exposure." *Id.* Finally, the administrative law judge observed that "the validity of the evidence on which Dr. Lee relied [is] called into question." *Id.* at 10.

Karst-Robbins Coal Co., 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Thus, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), as supported by substantial evidence.

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718.⁷ 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

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

⁷In view of our disposition of this case on the merits at 20 C.F.R. §718.202(a), we need not address the administrative law judge's findings on the merits at 20 C.F.R. §718.204(c) or his material change in conditions findings at 20 C.F.R. §725.309.

