

BRB No. 06-0472 BLA

ROGER F. FOSTER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TERRY EAGLE COAL COMPANY)	DATE ISSUED: 12/14/2006
)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Roger F. Foster, Gilboa, West Virginia, *pro se*.

Christopher M. Hunter (Jackson Kelly, PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (01-BLA-1096) of Administrative Law Judge Daniel L. Leland (the administrative law judge) 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 concluded that the evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total respiratory disability

¹ Claimant filed this claim with the Department of Labor on August 4, 2000. Director's Exhibit 1. The new regulations, concerning evidentiary limitations, are not applicable to this claim. 20 C.F.R. §§725.2; 725.414.

pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied the claim.

On appeal, claimant generally challenges the administrative law judge's Decision and Order.² Employer, in response to claimant's appeal, asserts that the administrative law judge's findings are supported by substantial evidence, and that the administrative law judge's denial of benefits should, accordingly, be affirmed. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will participate in this appeal.

In an appeal by a claimant, filed 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. *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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After careful consideration of the administrative law judge's Decision and Order – Denying Benefits and the evidence of record, we conclude that the administrative law judge's Decision and Order - Denying benefits is rational, supported by substantial evidence, and in accordance with law. It is, accordingly, affirmed. The administrative law judge properly found that the x-ray interpretation evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as the preponderance of negative x-ray readings were made by readers with superior qualifications, *i.e.*, eighteen out of twenty-two negative readings were made by dually qualified, Board-certified, B-readers while only one positive reading was rendered by such a reader. Decision and Order at 6. This was a proper qualitative and quantitative analysis of the x-ray interpretation evidence. *See Staton v. Norfolk and Western Railway Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 5. We, affirm, therefore, the administrative law judge's finding that the x-ray evidence failed to establish the existence of pneumoconiosis at Section

² Claimant appeared at the hearing before the administrative law judge without counsel. The administrative law judge's conduct towards claimant at the hearing satisfies the requirements of *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984) for the treatment of claimants appearing without counsel.

718.202(a)(1).

Further, the administrative law judge correctly found that the record contains no biopsy or autopsy evidence; thus the existence of pneumoconiosis could not be established pursuant to Section 718.202(a)(2). Moreover, the administrative law judge correctly found that none of the presumptions contained in Section 718.202(a)(3) were applicable to the instant claim, thereby precluding the establishment of the existence of pneumoconiosis pursuant to Section 718.202(a)(3). *See* 20 C.F.R. §§718.304, 718.305, 718.306.

With respect to Section 718.202(a)(4), the administrative law judge found that the existence of pneumoconiosis was not established thereunder because the opinion of Dr. Gaziano, who found the existence of pneumoconiosis, contained no rationale or explanation for its findings. The administrative law judge, therefore, found the report was unreasoned and undocumented. This was reasonable. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR at 1-155; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*), *aff'd sub nom. Director, OWCP v. Cargo Mining Co.*, Nos.88-3531, 88-3578 (6th Cir. May 11, 1989)(unpub.); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Cooper v. Director, OWCP*, 11 BLR 1-95 (1988)(Ramsey, CJ, concurring); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 6. Instead, the administrative law judge found that the opinions of Drs. Zalvidar, Fino, Dahhan and Stewart outweighed the opinion of Dr. Durham because they were collectively better reasoned. This was rational. *See Trumbo*, 17 BLR at 1-88-89, n.4; *Clark*, 12 BLR at 1-155; *Tackett*, 12 BLR 1-11; *McMath*, 12 BLR 1-6; *Cooper*, 11 BLR 1-95; *Fields*, 10 BLR 1-19; Decision and Order at 6. We affirm, therefore, the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Further, citing *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), the administrative law judge concluded that, weighed together, the evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a). We affirm, therefore, the administrative law judge's denial of benefits, as the evidence is insufficient to establish the existence of pneumoconiosis, a necessary element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Because we affirm the administrative law judge's finding that the existence of pneumoconiosis is not established at Section 718.202(a)(1)-(4) we need not address the administrative law judge's findings on total disability at Section 718.204(b)(2), as it is rendered moot by our disposition of the case. *See Cochran v. Director, OWCP*, 16 BLR 1-101 (1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

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