

BRB No. 98-0433 BLA

HARRY M. HAWKINS)		
)		
Claimant-Petitioner))
)		
v.)		
)	DATE	ISSUED: <u>12/16/98</u>
CLINCHFIELD COAL 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-Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Harry M. Hawkins, Clintwood, Virginia, *pro se*¹.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

¹Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. In a letter dated December 16, 1997, the Board stated that claimant would be considered to be representing himself on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

Claimant, without the assistance of counsel, appeals the Decision and Order-Denial of Benefits (97-BLA-1327) of Administrative Law Judge Richard T. Stansell-Gamm on a claim² 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 accepting the parties' stipulation to seventeen years of coal mine employment, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §718.202(a). 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 denial of benefits. 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 will consider 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 supported by substantial evidence, are rational, and are consistent with applicable 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 (1985).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203 and 718.204. Failure to establish any one of these elements precludes entitlement. See *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

After considering the administrative law judge's Decision and Order-Denial of Benefits and the evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that claimant failed to establish pneumoconiosis pursuant to Section 718.202(a). The administrative law judge correctly found that all of the interpretations of the four x-rays of record, including interpretations by dually qualified Board-certified radiologists and B readers, are negative for the existence of pneumoconiosis. Thus, the administrative law judge properly found that the x-ray evidence did not support a finding of pneumoconiosis under Section 718.202(a)(1). Decision and Order-Denial of Benefits at 6; Director's

²Claimant filed the instant claim in June of 1996. Director's Exhibit 1.

Exhibits 15-17, 27, 32; Employer's Exhibits 1-4. Also, since the record contains no biopsy evidence or evidence of complicated pneumoconiosis, see 20 C.F.R. §718.304, and the presumptions contained in 20 C.F.R. §§718.305 and 718.306 are inapplicable in this living miner's claim filed after January 1, 1982, see 20 C.F.R. §718.305(e); Director's Exhibit 1, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) and (a)(3). Decision and Order at 4.

Finally, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(4), as he rationally accorded less weight to the opinion of Dr. Paranthaman, the only physician of record to diagnose pneumoconiosis. The administrative law judge permissibly concluded that Dr. Paranthaman's opinion is unreasoned because the doctor failed to explain how the data obtained during his examination of claimant supported his diagnosis of chronic bronchitis related to coal mine employment. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Decision and Order-Denial of Benefits at 10; Director's Exhibits 12-14, 16. In addition, the administrative law judge acted within his discretion in according greatest probative weight to the contrary opinion of Dr. Hippensteel, in light of his superior qualifications as pulmonary specialist and because his opinion is better supported by the objective medical data of record.³ *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Director's Exhibits 12, 14-17, 27, 30, 32; Employer's Exhibits 1-4; Decision and Order-Denial of Benefits at 10-11. Accordingly, substantial evidence supports the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(4). Consequently, we affirm the administrative law judge's determination that claimant has failed to establish the existence of pneumoconiosis at Section 718.202(a)(1)-(4).

Inasmuch as claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement, an award of benefits under Part 718 is precluded. See *Perry, supra*.

³The qualifications of Dr. Paranthaman were not contained in the evidence of record. The record reflects that Dr. Hippensteel is Board-certified in internal medicine and pulmonary disease. Employer's Exhibit 1.

Accordingly, the administrative law judge's Decision and Order-Denial of Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOM D. NELSON, Acting
Administrative Appeals Judge