

BRB No. 99-0581 BLA

JOHN C. DIXON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LOST MOUNTAIN MINING/ MCI MINING CORPORATION)	DATE ISSUED:
)	
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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

John C. Collins (Collins, Allen & McFarland), Salyersville, Kentucky, for claimant.

Richard Davis (Arter & Hadden, L.L.P.), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (98-BLA-0138) of Administrative Law Judge Daniel J. Roketenetz 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 administrative law judge found that claimant established ten years of coal mine employment, and based on the filing date of the claim, applied the regulations at 20 C.F.R. Part 718. The administrative law judge found that claimant failed 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). Accordingly, benefits were denied. Claimant appeals, contending only that the administrative law judge erred in failing to find that the x-

ray evidence is sufficient to establish pneumoconiosis at Section 718.202(a)(1).¹ Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), has not participated in this appeal.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any one of these elements precludes entitlement. *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant's sole contention on appeal is that the administrative law judge failed to find the existence of pneumoconiosis based on the four positive readings submitted pursuant to Section 718.202(a)(1). However, claimant fails to allege any specific error on the part of the administrative law judge in weighing the x-ray evidence. As claimant does not allege any basis for his appeal, we must affirm the administrative law judge's weighing of the x-ray evidence pursuant to Section 718.202(a)(1). *Barnes v. Director, OWCP*, 19 BLR 1-71 (1995); *Fish v. Director, OWCP*, 6 BLR 1-10 (1983). As claimant failed to establish any element of entitlement, we affirm the administrative law judge's denial of benefits. *See Adams, supra; Trent, supra; Gee, supra; Perry, supra.*

¹ We affirm the administrative law judge's findings of ten years of coal mine employment and that employer is the responsible operator, as well as his findings that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2)-(4) and failed to establish total disability at 20 C.F.R. §718.204(c), as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge