

BRB No. 97-1046 BLA

CARL W. ROSE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LAMBERT COAL COMPANY	)	
	)	
and	)	
	)	
THE FIRE AND CASUALTY COMPANY OF	)	DATE ISSUED:
CONNECTICUT	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Carl W. Rose, Clintwood, Virginia, *pro se*.<sup>1</sup>

Michael F. Blair (Penn, Stuart, & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

---

<sup>1</sup> Ron Carson, a benefits counselor with Stone Mountain Health Services in St. Charles, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

Claimant, without legal representation, appeals the Decision and Order (95-BLA-1374) of Administrative Law Judge Richard E. Huddleston 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.* Claimant filed his claim on March 18, 1988. By Decision and Order dated April 22, 1991, the administrative law judge found that while claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b), claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits. On appeal, the Board affirmed the administrative law judge's denial of benefits under 20 C.F.R. §718.204(c).<sup>2</sup> *Rose v. Lambert Coal Co.*, BRB No. 91-1418 BLA/A (Nov. 24, 1993) (unpublished). Claimant subsequently filed a request for modification on October 13, 1994. With respect to the issue of modification, the administrative law judge initially found the newly submitted evidence sufficient to establish a change in conditions under 20 C.F.R. §725.310. On the merits of entitlement, the administrative law judge reexamined his prior finding of pneumoconiosis,<sup>3</sup> and concluded that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that claimant is not totally disabled. Accordingly, the administrative law judge denied benefits. Claimant appeals without legal representation, contesting the denial of benefits. Employer responds, urging affirmance of

---

<sup>2</sup> Employer cross-appealed, challenging the administrative law judge's finding of pneumoconiosis under 20 C.F.R. §718.202(a)(1). The Board, in light of its affirmance of the administrative law judge's finding under 20 C.F.R. §718.204(c), declined to address employer's cross-appeal. *Rose v. Lambert Coal Co.*, BRB No. 91-1418 BLA/A (Nov. 24, 1993) (unpublished).

<sup>3</sup> As noted by the administrative law judge, the true doubt rule which the administrative law judge previously applied to find the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) has been rejected by the United States Supreme Court. See *Director, OWCP v. Greenwich Collieries* [Ondecko], 114 S.Ct. 2251, 18 BLR 2A-1 (1991), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

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 considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *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 consistent with applicable law. 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 addressing whether claimant established the existence of pneumoconiosis, the administrative law judge properly found that the record contains seventy-three interpretations of seventeen x-rays, of which there is only one positive reading by Dr. Westerfield, a Board-certified radiologist and B-reader, of the September 12, 1988 film. Decision and Order (D&O) at 10; Director's Exhibit 23. The administrative law judge permissibly found the positive reading to be outweighed by three negative x-ray readings of the same film by physicians who are as qualified as Dr. Westerfield. D&O at 10; Employer's Exhibits (EXs) 15, 24, 25. The administrative law judge further noted that Dr. Westerfield had also read a subsequent x-ray dated March 15, 1989 as negative for pneumoconiosis. D&O at 10; EX 31. Consequently, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Inasmuch as the record is devoid of autopsy or biopsy evidence, the administrative law judge properly found that claimant is unable to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). D&O at 10. Additionally, the administrative law judge properly found that claimant is unable to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(3) as he is not eligible for the presumptions described therein. *Id.*; see 20 C.F.R. §§718.304, 718.305 and 718.306.

Under 20 C.F.R. §718.202(a)(4), the administrative law judge considered nine medical opinions, noting that Dr. Smiddy is the only physician of record to diagnose pneumoconiosis.<sup>4</sup> D&O at 11. In weighing the conflicting medical opinion evidence, the

---

<sup>4</sup> The opinions of Drs. Strang, Kennedy, and Gregoriou were given no weight by the administrative law judge as those doctors do not discuss claimant's respiratory or pulmonary system. Decision and Order (D&O) at 11; Employer's Exhibits (EXs) 14, 35, 64. The administrative law judge further noted that Dr. McKnight merely reiterated claimant's statement that he suffers from chronic bronchitis. D&O at 11; EX 65. In contrast, the administrative law judge found that Drs. Endres-Bercher and Sargent diagnosed that there is no evidence of coal workers' pneumoconiosis, and the doctors opined that claimant has chronic bronchitis due to smoking. D&O at 11; EX 9, 17. With regard to Dr. Joshi, the administrative law judge found that the doctor did not diagnose pneumoconiosis, but noted chronic bronchitis by history. D&O at 11; EX 6. The administrative law judge also found

administrative law judge permissibly assigned less weight to Dr. Smiddy's diagnosis of pneumoconiosis because the doctor did not consider "[c]laimant's more than 30 pack-year history of smoking ...."<sup>5</sup> D&O at 11; see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). The administrative law judge also acted within his discretion in crediting the opinions of Drs. Endres-Bercher and Sargent as he found their reports to be "documented, reasoned and consistent with the vast weight of the objective medical evidence." D&O at 11; see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). We, therefore, affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Because we affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a), we decline to address his findings relevant to the issue of total disability. Inasmuch as claimant is unable to establish the existence of pneumoconiosis, a requisite element of entitlement, see *Perry v. Director, OWCP*, 9 BLR 1-1 (1986), benefits are precluded.

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

---

that Dr. Paranthaman diagnosed chronic bronchitis with bronchospasm primarily due to smoking, noting that dust exposure can provoke bronchospasm. D&O at 11; Director's Exhibit (DX) 11.

<sup>5</sup> Although, in his 1989 report, Dr. Smiddy noted that "patient is currently a non-smoker. He quit in December 1988," the doctor did not specifically indicate the extent of claimant's smoking history. EX 67. Dr. Smiddy stated he was "unable to prove pneumoconiosis." *Id.* The doctor diagnosed chronic bronchitis, but did not specifically address the etiology of the disease. *Id.* In conjunction with his 1994 report, Dr. Smiddy diagnosed coal workers' pneumoconiosis. DX 72. The doctor, however, did not mention claimant's smoking history. *Id.*

---

NANCY S. DOLDER  
Administrative Appeals Judge