BRB No. 01-0427 BLA

JAMES R. HUNLEY	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED:
BRADLEY EQUIPMENT 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 Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

James R. Hunley, Pioneer, Tennessee, *pro se*.

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

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (1999-BLA-710) of Administrative Law Judge Edward Terhune Miller 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).[1] Based on the filing date of October 17,

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001).

1997,[2] the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. Director's Exhibit 1. The administrative law judge credited claimant with fourteen and three quarter years of coal mine employment. On the merits, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a), 718.203(b)(2000), or to demonstrate the presence of a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b),(c) (2000). Accordingly, benefits were denied.

On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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).

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[2]Claimant filed an application for benefits on October 17, 1997. Director's Exhibit 1. The district director denied benefits on March 26, 1998, and again on November 9, 1998, due to claimant's failure to establish any required element of entitlement. Director's Exhibits 14, 21. Claimant thereafter appealed the denial of benefits. Director's Exhibit 24.

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204(2000). *Grant v. Director, OWCP,* 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988).[3] Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP,* 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's findings and the evidence of record, we conclude that substantial evidence supports the administrative law judge's determination that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1)-(4) (2000). At Section 718.202(a)(1) (2000), the administrative law judge weighed the conflicting interpretations of the x-rays of record, and rationally accorded determinative weight to the vastly greater number of negative readings performed by physicians who are B readers or Board-certified radiologists, or who are dually qualified in the field of radiology.[4] Decision and Order at 4, 7; Director's Exhibits 9-11; Employer's Exhibits 3-9, 23, 36-52; *see Staton v. Norfolk & 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.

[3]The instant case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, inasmuch as claimant's coal mine employment occurred in the State of Tennessee. Director's Exhibit 4; *See Shupe v. Director, OWCP,* 12 BLR 1-200 (1989)(*en banc*).

[4]A B reader is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination by the National Institute of Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E) (2001); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135 n.16, 11 BLR 2-1 n.16 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.,* 8 BLR 1-211 (1985).

1993); *Worhach v. Director, OWCP,* 17 BLR 1-105 (1993); *Edmiston v. F&R Coal Co.,* 14 BLR 1-65 (1990); *Dixon v. North Camp Coal Co.,* 8 BLR 1-344 (1985). We also affirm the administrative law judge's findings that the requirements of Section 718.202(a)(2)-(3) (2000), were not met since the record contains no biopsy evidence, and the regulatory presumptions contained at 20 C.F.R. §§718.304, 718.305, and 718.306 (2000), are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. Decision and Order at 7; Director's Exhibit 1; *Langerud v. Director, OWCP,* 9 BLR 1-101 (1986).

Pursuant to Section 718.202(a)(4) (2000), the administrative law judge rationally accorded little weight to the reports of Drs. Overholt, Beck, and Dobbins, who treated claimant's allergies, and to the reports of Drs. Robinson, Lawrence, Glover, and Duncan, who examined claimant for disability under the Social Security Act, as none of these physicians diagnosed pneumoconiosis and their opinions cannot support claimant's affirmative burden of proof on this issue.[5] Employer's Exhibits 1, 2, 16, 18, 22, 24, 25, 27-30; Decision and Order at 5-7; *Director, OWCP v. Greenwich Collieries [Ondecko],* 512 U.S. 267, 18 BLR 2A-1 (1994). The administrative law judge permissibly found that Dr. McConnell's opinion, that claimant has findings "suggestive" of coal workers' pneumoconiosis and chronic obstructive pulmonary disease, was equivocal and not well reasoned, as this physician failed to identify the specific findings which formed the basis for his diagnosis, and therefore the administrative law judge properly accorded this opinion little weight. Decision and Order at 6-8; Director's Exhibit 16; *Griffith v. Director, OWCP,* 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Trumbo v. Reading Anthracite Co.,* 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149 (1989)(*en banc*); *Justice v. Island Creek Coal Co.,* 11 BLR 1-91 (1988). Dr. Pharaoh's diagnosis of pneumoconiosis was also rationally accorded little weight, as it was based upon the physician's positive x-ray reading which was reread as negative by more qualified readers. Decision and Order at 6-8; Director's Exhibit 7; *Trumbo, supra; Clark, supra.* Moreover, it was within the administrative law judge's discretion to accord determinative weight to the contrary opinion of Dr. Dahhan, who found no evidence of pneumoconiosis, based on the physician's superior qualifications as a board-certified pulmonary specialist and the administrative law judge's determination that Dr. Dahhan's report was thorough, well documented and reasoned. Decision and Order at 6-8; Employer's Exhibit 32; *Trumbo, supra; Clark, supra; Dillon v.*

[5]While the administrative law judge determined that Dr. Overholt diagnosed asthmatic bronchitis, Employer's Exhibits 18, 24; Dr. Lawrence diagnosed chronic bronchitis and chronic obstructive pulmonary disease, Employer's Exhibits 28, 30; and Dr. Duncan diagnosed chronic obstructive pulmonary disease, Employer's Exhibit 29, the record reflects that none of these physicians affirmatively attributed claimant's condition to dust exposure in coal mine employment. Decision and Order at 5; *see* 20 C.F.R. §718.201 (2001).

Peabody Coal Co., 11 BLR 1-113 (1988).[6]

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra.* The administrative law judge's findings pursuant to Section 718.202(a)(1)-(4) (2000) are supported by substantial evidence, and thus are affirmed. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement under Part 718, *see Trent, supra,* we affirm the administrative law judge's finding that claimant is not entitled to benefits.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

[6]We note that the Decision and Order does not specifically indicate what weight was accorded to the opinion of Dr. Prince who diagnosed asthma and obstructive lung disease due to smoking. Decision and Order at 6-8; Employer's Exhibits 14, 15. This omission is harmless however, since this opinion supports the administrative law judge's findings regarding the existence of pneumoconiosis. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

BETTY JEAN HALL
Administrative Appeals Judge