

BRB No. 02-0552 BLA

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| HERMAN CALDWELL |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| CYPRUS KANAWHA CORPORATION |) | DATE ISSUED: |
| |) | |
| Employer-Respondent |) | |
| |) | |
| and |) | |
| |) | |
| CYPRUS AMAX MINERALS COMPANY/ RAG |) | |
| |) | |
| Carrier |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Natalie D. Brown (Jackson & Kelly PLLC), Lexington, Kentucky, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (01-BLA-0657) of Administrative Law Judge Thomas F. Phalen, Jr. 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 May 16, 2000, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited claimant with twenty-six years of coal mine employment and found employer to be the responsible operator. 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 and total disability due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence did not establish the existence of pneumoconiosis, and generally avers that the administrative law judge erred in finding the evidence insufficient to establish total disability. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20

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, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² We affirm the findings of the administrative law judge on the length of coal mine employment, on the designation of employer as the responsible operator, and at 20 C.F.R. §§718.202(a)(2)-(3), 718.203(b), as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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. 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*).

Claimant first contends that the administrative law judge erred in relying solely on the qualifications of the x-ray readers and the numerical superiority of the negative x-ray readings to find that the existence of pneumoconiosis was not established. In finding the x-ray evidence insufficient to establish the existence of pneumoconiosis, however, the administrative law judge correctly held that because all of the x-ray interpretations submitted in connection with the claim were negative for the existence of pneumoconiosis, Director's Exhibits 10, 11, 21, 23, 25-28, Decision and Order at 9, claimant failed to establish the existence of pneumoconiosis by x-ray evidence. Thus, claimant's argument in this case is without merit. 20 C.F.R. §718.202(a)(1); *Trent, supra*; see *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). We, therefore, affirm the findings of the administrative law judge at 20 C.F.R. § 718.202(a)(1) as supported by substantial evidence.

Claimant next asserts that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis. In support of this argument, however, claimant does no more than cite to various cases issued by the Board which address how the administrative law judge must weigh the evidence. Claimant does not cite a specific error made by the administrative law judge in addressing the medical opinion evidence. The Board has, therefore, no basis upon which to review this issue on appeal. See *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g Cox v. Director, OWCP*, 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Hence, the Board must affirm the administrative law judge's finding that the medical opinion evidence failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). *Cox, supra*; *Sarf, supra*; *Fish, supra*. Because claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, we need not consider claimant's argument as to whether the medical opinion evidence established total disability. See *Trent, supra*; *Perry, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge