

BRB No. 97-0655 BLA

NOAH VANCE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
ELKAY MINING 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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Barbara E. Holmes (Blaufeld and Schiller), Pittsburgh, Pennsylvania, for claimant.

Kathy L. Snyder (Jackson & Kelly), Moragantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (93-BLA-896) of Administrative Law Judge Daniel J. Roketenetz 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). The administrative law judge credited claimant with fifteen years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in finding that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c)(1)-(4). Employer responds, urging affirmance of the denial of benefits.

The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.<sup>1</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated 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 C.F.R. Part 718, claimant must establish 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 of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge noted that the record contained seventeen x-ray readings of five x-rays and that the Board-certified radiologists and B-readers interpreted the x-rays as negative for the existence of pneumoconiosis. Decision and Order at 4-5. As a result, the administrative law judge weighed all of the x-ray evidence of record and rationally accorded greater weight to the preponderance of x-ray interpretations by the readers with superior qualifications. *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

In weighing the medical opinions of record, the administrative law judge also rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). *Perry, supra*. In so finding, the administrative law judge acted within his discretion as fact-finder in concluding that the opinions of Drs. Acosta and Rasmussen, who opined that claimant suffered from pneumoconiosis, were outweighed by the medical opinion of Dr. Fino, who found that

---

<sup>1</sup>The administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3) are unchallenged on appeal and are therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

claimant's condition was unrelated to coal mine employment, after noting his superior qualifications, his review of all of the medical evidence of record and finding that his opinion was well-documented and well-reasoned and consistent with the opinions of Drs. Gordon and Dahhan. *Clark, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985) *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); Decision and Order at 8; Director's Exhibit 20; Claimant's Exhibit 1; Employer's Exhibits 2, 11-12, 23, 25. Inasmuch as the administrative law judge weighed all of the medical opinions and rationally concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis, we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *Clark, supra*; *Perry, supra*; *Lucostic, supra*; *Oggero, supra*. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Claimant's failure to establish the existence of pneumoconiosis pursuant to Section 718.202(a), an essential element of entitlement under 20 C.F.R. Part 718, precludes an award of benefits thereunder. *Anderson, supra*; *Trent, supra*.

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

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

JAMES F. BROWN  
Administrative Appeals Judge

---

NANCY S. DOLDER  
Administrative Appeals Judge