

BRB No. 97-0702 BLA

JERRY G. GILLIAM)
)
 Claimant-Petitioner)
)
 v.)
)
 WESTMORELAND COAL COMPANY) 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 -- Denying Benefits of Mollie W. Neal,
Administrative Law Judge, United States Department of Labor.

Jerry G. Gilliam, Big Stone Gap, Virginia, *pro se*.

John W. Walters (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel,¹ the Decision and Order -- Denying Benefits (95-BLA-2284) of Administrative Law Judge Mollie W. Neal 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).² The administrative law judge credited claimant with sixteen years of coal mine employment, and determined that the

¹Ron 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, but Mr. Carson is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

²Claimant's application for benefits, dated September 26, 1994, was filed on October 3, 1994. Claimant's Exhibit 1.

evidence is insufficient to support a finding that claimant's daughter, Carrie Lynn, qualifies as the miner's dependent for purposes of augmentation of benefits under 20 C.F.R. §§725.221; 725.209. Considering the merits of the claim under 20 C.F.R. Part 718, the administrative law judge determined that the evidence of record is insufficient to meet claimant's burden to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1) through (a)(4). Accordingly, benefits were denied.

Employer responds to claimant's appeal, and requests affirmance of the decision below. The Director, Office of Workers' Compensation Programs, has not filed a brief in the 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 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 under Part 718, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, and that he is totally disabled by the disease. 20 C.F.R. §§718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

In the instant case, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(1) through (a)(4). Pursuant to Section 718.202(a)(1), she correctly noted that all six x-ray readings of the two x-rays of record dated October 26, 1994 and February 20, 1995, are negative for the existence of pneumoconiosis. Director's Exhibits 17, 18, 33, Employer's Exhibits 1, 2. We thus, affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1).

The administrative law judge further noted correctly that the record contains no biopsy evidence, 20 C.F.R. §718.202(a)(2), and she properly determined that claimant cannot establish the existence of pneumoconiosis at Section 718.202(a)(3) pursuant to the presumptions referred to therein.

Considering the medical opinion evidence under Section 718.202(a)(4), the administrative law judge properly found that neither physician of record, each of whom examined claimant and conducted objective tests, diagnosed pneumoconiosis within the meaning of the Act. The record contains the reports of Drs. Paranthaman and Dahhan. In his report dated October 26, 1994, Dr. Paranthaman diagnosed "Productive cough... due to combined effect of postnasal drip and cigarette smoking. It is unlikely to be due to coal dust exposure because the symptoms started 3 years after quitting coal mine employment."

Director's Exhibit 14. Dr. Paranthaman also diagnosed mild hypertension unrelated to coal dust exposure, and opined that claimant has the respiratory capacity to perform the work of a coal miner. *Id.* In his report dated February 21, 1995, Dr. Dahhan found insufficient objective evidence to justify a diagnosis of coal workers' pneumoconiosis based on claimant's normal physical examination, normal pulmonary function study, normal blood gas study, and negative chest x-ray. Director's Exhibit 33. Dr. Dahhan also opined that claimant retains the physiological and respiratory capacity to return to his previous coal mine employment or comparable work. *Id.* Inasmuch as the administrative law judge's finding, that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a) (4), is rational and supported by substantial evidence, it is affirmed.

In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1)-(4), an essential element of entitlement, we further affirm the administrative law judge's denial of benefits in the instant case, as a finding of entitlement is precluded. *Trent, supra; Perry, supra; see also 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).

Accordingly, the administrative law judge's Decision and Order -- Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge