

BRB No. 89-1635 BLA

ARLIE CARTER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Giles J. McCarthy, Administrative Law Judge, United States Department of Labor.

Arlie Carter, Bluefield, West Virginia, pro se.  
Jeffrey S. Goldberg (Robert P. Davis, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

Before: STAGE, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

Claimant,<sup>1</sup> without legal representation, appeals the Decision and Order (87-

---

<sup>1</sup> We note that claimant appeared, without the assistance of counsel, at the hearing before the administrative law judge. Based on the facts of the instant case, we hold that the hearing before the administrative law judge was properly conducted.

BLA-507) of Administrative Law Judge Giles J. McCarthy 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 reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with at least ten years but less than fifteen years of qualifying coal mine employment. The administrative law judge found, however, that claimant failed to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202 or total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, contending that the evidence establishes entitlement under Part 718. The Director, Office of Workers' Compensation Programs, responds, urging affirmance.

In an appeal by a claimant filed 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

---

See Shapell v. Director, OWCP, 7 BLR 1-304 (1984).

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(Supp. V 1987).

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 pursuant to Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

Turning first to the issue of the length of claimant's coal mine employment, the administrative law judge credited claimant with approximately eleven and three-quarter years of qualifying coal mine employment between 1961 and 1981, based on claimant's testimony, the Social Security Administration (SSA) records, employment records, and other documentary evidence of record. Decision and Order at 2; see Hearing Transcript at 17-23; Director's Exhibits 1-5, 9, 10. Although the SSA records also listed earnings for the years 1981-1983, see Director's Exhibit 3, the administrative law judge properly credited claimant with only one quarter of coal mine employment during this period, inasmuch as claimant testified that he ceased working on March 18, 1981, and claimant's employment records corroborated this testimony. See Hearing Transcript at 17, 28; Director's Exhibit 5. The administrative law judge otherwise credited claimant with qualifying coal mine employment for

every quarter reflected in the SSA records in which claimant earned fifty dollars or more. Decision and Order at 2; see Justice v. Island Creek Coal Co., 11 BLR 1-91 (1988); Tackett v. Director, OWCP, 6 BLR 1-839 (1984). Consequently, we affirm the administrative law judge's determination that claimant accumulated more than ten years but less than fifteen years of coal mine employment, as it is based upon a reasonable method of calculation and is supported by substantial evidence in the record considered as a whole. See Dawson v. Old Ben Coal Co., 11 BLR 1-58 (1988); Vickery v. Director, OWCP, 8 BLR 1-430 (1986).

Turning next to the merits of this claim, the administrative law judge properly found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), as the x-ray interpretations of record were negative for pneumoconiosis. Decision and Order at 3; Director's Exhibits 15-17. The administrative law judge further determined that the record did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2), as there is no biopsy or autopsy evidence in the record. The regulatory presumptions at 20 C.F.R. §§718.304 and 718.306 are not available to claimant, as there is no evidence of complicated pneumoconiosis in the record and claimant is not deceased. The administrative law judge additionally found that claimant had not established invocation of the presumption of pneumoconiosis at 20 C.F.R. §718.305, as claimant had not satisfied the threshold requirement of at least fifteen years of qualifying coal mine employment, and thus claimant failed to establish the existence

of pneumoconiosis pursuant to Section 718.202(a)(3). Decision and Order at 3. Finally, the administrative law judge properly found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), as Dr. Taylor, who provided the sole medical report of record, diagnosed bronchitis and checked the "no" box on Department of Labor Form CM-988, which indicated that claimant's condition was not related to dust exposure in coal mine employment. Decision and Order at 3; Director's Exhibit 11. See 20 C.F.R. §718.201; Perry v. Director, OWCP, 9 BLR 1-1 (1986). The administrative law judge's findings pursuant to Section 718.202 are supported by substantial evidence, and we hereby affirm them. Inasmuch as claimant has failed to establish a requisite element of entitlement to benefits, i.e., the existence of pneumoconiosis, claimant is precluded from entitlement to benefits under Part 718, and we need not address the remaining issues of etiology, total disability,<sup>2</sup> and causation. See Trent, supra.

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

SO ORDERED.

---

<sup>2</sup> On appeal, claimant maintains that he underwent blood gas testing, contrary to the administrative law judge's finding that the record contains no blood gas study evidence. See Decision and Order at 4. A review of the record, however, indicates that the technician was unable to obtain a resting blood gas sample, as claimant complained of severe tenderness at the puncture site and could not hold still due to the pain. See Director's Exhibit 13.

BETTY J. STAGE, Chief  
Administrative Appeals Judge

JAMES V. BROWN  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge