BRB No. 98-1257 BLA

REED BOWLING	)	
	)	
Claimant-Petitioner	)	
		)
v.	)	DATE ISSUED: 6/16/99
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	)
	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of George P. Morin, Administrative Law Judge, United States Department of Labor.

Reed Bowling, Danville, Virginia, *pro se.*

Sarah M. Hurley (Henry L. Solano, 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, United States Department of Labor.

Before: HALL, Chief Administrative Appeal Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant[1], without the assistance of counsel, appeals the Decision and Order (96-BLA-1131) of Administrative Law Judge George P. Morin 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 found that claimant established sixteen years of qualifying coal mine

[1]Claimant is Reed Bowling, the miner, who filed a claim for benefits on January 13, 1995. Director's Exhibit 1.

employment but failed to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in determining that he failed to establish entitlement to benefits. The Director, Office of Workers' Compensation Programs, responds urging the Board to affirm the denial of benefits.[2]

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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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 pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements by a preponderance of the evidence compels a denial of benefits. *See Anderson*, *supra*; *Baumgartner*, *supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.202(a)(1), the record contains four interpretations of three x-rays, only one of which is positive for the existence of pneumoconiosis. Director's Exhibits 13-16. Of the three negative interpretations, all were read by B readers and two were read by a physician who is both a B reader and a Board-certified radiologist. Director's Exhibits 13-15. The positive x-ray was read by a physician who is neither a B reader nor a Board-certified radiologist. Director's

[2]We affirm the administrative law judge's decision to credit claimant with sixteen years of coal mine employment as it is unchallenged on appeal and not adverse to claimant. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Exhibit 16. The administrative law judge rationally concluded that the preponderance of the interpretations submitted by the physicians with the highest credentials is negative for the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 8; *Parulis v. Director, OWCP*, 15 BLR 1-28 (1991); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Perry, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Consequently, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

We also affirm the administrative law judge's findings that Section 718.202(a)(2)-(3) is unavailable to claimant inasmuch as the record contains no autopsy or biopsy evidence and the presumptions set forth at Section 718.202(a)(3) are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(2), (3); 718.304, 718.305(e), 718.306; Decision and Order at 3; Director's Exhibit 1.

Pursuant to Section 718.202(a)(4), the record contains the medical opinions of two physicians. Dr. Henderson, in a report dated March 28, 1995, opined that claimant has pneumoconiosis, while Dr. Sahillioglu, in a record review dated July 6, 1995, opined that claimant does not have pneumoconiosis. Director's Exhibits 10, 11. The administrative law judge noted that Dr. Henderson based his opinion regarding the existence of pneumoconiosis, in part, on the moderate impairment demonstrated on his March 8, 1995 pulmonary function study. Decision and Order at 7; Director's Exhibits 8A, 10. The administrative law judge acted within his discretion as fact-finder in finding Dr. Henderson's opinion weakened by the fact that he did not review the results of the most recent pulmonary function study, dated June 9, 1995, which yielded higher results. Decision and Order at 7; Director's Exhibit 9; *see generally Lafferty, supra; Clark v. Karst-Robbins Coal* Co., 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). The administrative law judge further acted within his discretion in finding that Dr. Sahillioglu's opinion is entitled to greater weight because he reviewed all of the medical evidence, particularly, the results of both pulmonary function studies, and because Dr. Henderson's opinion is not as well supported as Dr. Sahillioglu's opinion. Decision and Order at 7; *Lafferty, supra; Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90, n.1 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel, supra.* Consequently, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Because the administrative law judge considered all the relevant evidence of record and rationally determined that claimant has failed to

establish the existence of pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits. *Anderson, supra*; *Perry*, *supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge