

BRB No. 99-0568 BLA

BILLY H. COUCH)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY, INCORPORATED)	DATE ISSUED:
)	
and)	
)	
SUN COAL COMPANY, INCORPORATED)	
)	
Employer/Carrier- Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Harold Rader (Law Offices of Neville Smith), Manchester, Kentucky, for employer/carrier.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-0531) of Administrative Law Judge Joseph E. Kane denying benefits in 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 nineteen and one-half years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Further, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.¹

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹Inasmuch as the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3) are not challenged on appeal, we affirm these findings. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Initially, we reject claimant's contention that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) since the administrative law judge properly found that all of the x-ray readings of record are negative for pneumoconiosis.² Decision and Order at 10; Director's Exhibits 11, 12; Employer's Exhibits 1, 2. Thus, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).

Further, we reject claimant's contention that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge considered the two relevant medical opinions of record, namely the opinions of Drs. Broudy and Wicker. Drs. Broudy and Wicker opined that claimant does not suffer from pneumoconiosis. Director's Exhibit 9; Employer's Exhibit 2. Thus, inasmuch as none of the physicians of record opined that claimant suffers from pneumoconiosis or any chronic obstructive lung disease arising out of coal mine employment, we hold that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). See *Shoup v. Director, OWCP*, 11 BLR 1-110 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718.³ See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

²The record consists of four interpretations of two x-rays dated August 4, 1997 and April 20, 1998. The x-ray dated August 4, 1997 was interpreted by Drs. Sargent, Spitz and Wicker, Director's Exhibits 11, 12; Employer's Exhibit 1, and the x-ray dated April 20, 1998 was interpreted by Dr. Broudy, Employer's Exhibit 2. The administrative law judge correctly stated that **all** [of] the x-ray readings are negative and are verified by highly qualified physicians." Decision and Order at 10 (emphasis added). The administrative law judge observed that "[a]ll the reviewing physicians are B-readers and Drs. Sargent and Spitz are Board-certified Radiologists." *Id.*

³In view of our disposition of the case at 20 C.F.R. §718.202(a), we decline to address claimant's contention with regard to 20 C.F.R. §718.204(c)(4). See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge