BRB No. 04-0621 BLA

FRED JUSTICE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHEEP FORK ENERGY, INCORPORATED	)	DATE ISSUED: 03/10/2005
	)	
and	)	
	)	
AMERICAN INTERNATIONAL SOUTH COMPANY	)	
	)	
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 – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Fred Justice, River, Kentucky, *pro se.*

Timothy J. Walker (Ferreri & Fogle), Lexington, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order – Denial of Benefits (2003-BLA-6265) of Administrative Law Judge Thomas F. Phalen, Jr. rendered 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). Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718, and

credited claimant with twenty-five years of coal mine employment. On the merits, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), or total disability at 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove 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 to establish any one of these elements precludes entitlement. *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).[1]

Turning first to the administrative law judge's consideration of the x-ray evidence pursuant to Section 718.202(a)(1), we hold that the administrative law judge rationally credited the negative readings from those physicians with better qualifications in the field of radiology. Decision and Order at 4, 7; Employer's Exhibits 1, 2; Director's Exhibits 11-13; 20 C.F.R. §718.202(a)(1); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1995); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985). The administrative law judge's finding that the x-ray evidence did not establish the existence of pneumoconiosis at Section 718.202(a)(1) is, therefore, affirmed. We also affirm the administrative law judge's finding that the requirements of

[1] Since the miner's last coal mine employment took place in the Commonwealth of Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. Director's Exhibit 3; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Section 718.202(a)(2)-(3) were not met, as the record contains no biopsy evidence, and the regulatory presumptions contained at 20 C.F.R. §§718.304, 718.305, 718.306, are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. Decision and Order at 7; Director's Exhibit 2; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

Pursuant to Section 718.202(a)(4), the administrative law judge found that Dr. Baker's opinion, the sole medical opinion of record, which consisted of two forms dated February 9, 2003, was unreasoned as he diagnosed chronic obstructive pulmonary disease due to smoking and coal dust exposure on one form, a diagnosis which could, if credited, establish the existence of legal pneumoconiosis, but on the second report stated that claimant did not have any occupational lung disease caused by coal mine employment. Decision and Order at 5, 6, 8; Director's Exhibit 11. As Dr. Baker's opinion regarding the presence of pneumoconiosis is contradictory, the administrative law judge rationally found that the opinion was insufficient to satisfy claimant's burden of proof at this section. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *Hopton v. U.S. Steel Corp.*, 7 BLR 1-12 (1984). Further, as it is within the discretion of the administrative law judge, as the trier of fact, to determine whether a medical report is adequately documented and reasoned and the administrative law judge has reasonably exercised his discretion in this case, we affirm his finding that the medical opinion evidence of record is insufficient to establish the existence of pneumoconiosis. *Trumbo v. Reading Anthracite, Co.*, 17 BLR 1-85, 1-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *Clark*, 12 BLR 1-149. As we have affirmed the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), an essential element of entitlement, we must also affirm the denial of benefits. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1. We need not, therefore, address the sufficiency of the evidence relevant to any other element of entitlement.

Accordingly, the Decision and Order – Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge