BRB No. 00-0194 BLA

RONNIE LEE LOWE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MARTIN COUNTY COAL CORPORATION	)	
	)	
Employer-Respondent	)	DATE ISSUED:
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Ronnie Lee Lowe, Inez, Kentucky, *pro se.*

Jacqueline Syers Duncan (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (98-BLA-1261) of Administrative Law Judge Daniel J. Roketenetz 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). Claimant filed his application for benefits on November 20, 1996. Director's Exhibit 1. In a Decision and Order issued on October 15, 1999, the administrative law judge noted employer's stipulation that claimant established seventeen years of coal mine employment, and found that the evidence of record was insufficient to establish the presence of totally disabling pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. Part 718. Accordingly, benefits were denied.

In the instant appeal, claimant generally contends that he is entitled to benefits.

Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not participated 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. *McFall v. Jewell Ridge Coal Corp.,* 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 are in accordance with applicable 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).

To be entitled to benefits under Part 718, claimant must establish total respiratory disability due to pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *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] Failure to prove any one of these elements precludes entitlement. *Grant, supra; Trent, supra; Perry, supra.*

[1]The instant case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, inasmuch as claimant's coal mine employment occurred in the Commonwealth of Kentucky. *See Shupe v. Director, OWCP,* 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

After consideration of the administrative law judge's findings and the evidence of record, we conclude that substantial evidence supports the administrative law judge's determination that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4). At Section 718.202(a)(1), the administrative law judge weighed the conflicting interpretations of the x-rays of record , and accorded determinative weight to the greater number of negative readings performed by physicians who are both B readers and Board-certified radiologists.[2] Thus, the administrative law judge properly found that claimant did not satisfy his burden of proof at Section 718.202(a)(1). Director's Exhibits 10, 12, 13, 30-33, 35-41; Employer's Exhibits 1, 4. Decision and Order at 6- 8. As the administrative law judge's findings pursuant to this subsection are rational and supported by substantial evidence, they are affirmed. *Director, OWCP v. Greenwich Collieries [Ondecko],* 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP,* 990 F.2d 730, 17 BLR 2-61 (4th Cir. 1992); *Staton v. Norfolk & Western Railway 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. 1993); *Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.,* 11 BLR 1-113 (1988). We also affirm the administrative law judge's findings that the requirements of Section 718.202(a)(2)-(3) were not met since the record contains no biopsy evidence, and the regulatory presumptions contained at 20 C.F.R. §§718.304, 718.305, and 718.306 are inapplicable in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. *See* Director's Exhibit 1; Decision and Order at 4; *Langerud v. Director, OWCP,* 9 BLR 1-101 (1986).

Pursuant to Section 718.202(a)(4), the administrative law judge rationally determined that the opinions of Drs. Lafferty and Sundaram diagnosing pneumoconiosis were entitled to little weight since these physicians failed to explain how their documentation supported their conclusions. Director's Exhibit 31, 33. *Trumbo v. Reading Anthracite Co.,* 17 BLR 1-85 (1993); *Clark, supra; Tackett v. Cargo Mining Co.,* 12 BLR 1-11 (1988). The administrative law judge also rationally accorded less weight to these opinions, and to Dr. Amerson's diagnosis of pneumoconiosis since these physicians did not review the totality of the x-ray evidence of record, and therefore had less information available regarding claimant's condition. *Clark, supra; Sabett v. Director, OWCP,* 7 BLR 1-299 (1984); *Fuller v. Gibralter Coal Corp,* 6 BLR 1-1291 (1984). Moreover, it was within the administrative law judge's

[2]A B reader is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination by the National Institute of Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R.§37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP,* 484 U.S. 135 n.16, 11 BLR 2-1 n.16 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.,* 8 BLR 1-211 (1985). A B reader is more qualified than an A reader.

discretion to find the reports of Drs. Dahhan, and Repsher, that stated there was no evidence of pneumoconiosis, as well documented, reasoned and persuasive, since these physicians provided a thorough explanation of why the record evidence did not support a diagnosis of pneumoconiosis. Director's Exhibits 32, 38; Employer's Exhibits 1-3, 5, 6, 8; *Trumbo, supra; Clark supra; Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989)*; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Accordingly, we affirm 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)(1)-(4). Inasmuch, as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement under Part 718, *see Trent, supra,* we affirm the administrative law judge's finding that claimant is not entitled to benefits, and we need not discuss the remaining elements at Sections 718.203; 718.204.

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. *See Clark, supra.* Consequently, we affirm the administrative law judge's finding that claimant is not entitled to benefits.

Accordingly, the Decision and Order of the administrative law judge 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