BRB No. 01-0222 BLA

ELDEEN SAWYERS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TROJAN MINING AND PROCESSING	)	DATE ISSUED:
	)	
and	)	
	)	
TRAVELERS INSURANCE 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 - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Eldeen Sawyers, Ashcamp, Kentucky, *pro se*.

J. Logan Griffith (Wells, Porter, Schmitt & Jones), Paintsville, Kentucky, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (00-BLA-0229) of Administrative Law Judge Joseph E. Kane on a claim filed

[1] Claimant is Eldeen Sawyers, the miner, who filed his application for benefits on March 2, 1999. Director's Exhibit 1.

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, adjudicating this claim pursuant to 20 C.F.R. Part 718 (2000), credited claimant with twenty-four and one-half years of qualifying coal mine employment. The administrative law judge found that claimant failed to establish the existence of pneumoconiosis and total respiratory disability, and accordingly, denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, 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. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989). 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 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, a claimant must establish that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry*

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2 The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001).

v. Director, OWCP, 9 BLR 1-1 (1986) (*en banc*).

After consideration of the Decision and Order and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence, contains no reversible error, and therefore, it is affirmed. Relevant to Section 718.202(a)(1), the x-ray evidence of record consists of seventeen negative interpretations of five chest x-ray films. Director's Exhibits 10-12, 19, 20, 22-24, 26, 27, 29-31, 35-38. The administrative law judge correctly found that all of the x-ray readings were negative for the existence of pneumoconiosis, and therefore, insufficient to establish the existence of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(1); *Langerud v. Director, OWCP*, 9 BLR 1-101, 1-103 (1986); Decision and Order at 7. We affirm the administrative law judge's finding concerning the x-ray evidence inasmuch as it was rational and supported by substantial evidence. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Trent, supra*; *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 11.

Relevant to Section 718.202(a)(2), the administrative law judge correctly found that the evidence of record contains no biopsy evidence, and relevant to Section 718.202(a)(3), the administrative law judge correctly found that the presumption at Section 718.304 was inapplicable because there was no evidence of complicated pneumoconiosis and, as this was a living miner's claim filed after January 1, 1982, the presumptions at Sections 718.305 and 718.306 were inapplicable. Decision and Order at 11; 20 C.F.R. §718.202(a)(2)(3). Hence, we affirm the administrative law judge's findings relevant to Sections 718.202(a)(2) and (3) inasmuch as these determinations are rational and supported by the evidentiary record. *See* 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306.

Turning to the administrative law judge's consideration of the medical opinion evidence relevant to Section 718.202(a)(4), there are three physicians' opinions of record. After performing a pulmonary evaluation of claimant, Dr. Younes opined that claimant suffers from a severe obstructive impairment of which the primary cause was cigarette smoking and the secondary cause was occupational coal dust exposure. Director's Exhibit 10. Dr. Gill, treating claimant for an unexplained weight loss, diagnosed chronic obstructive pulmonary disease, but did not address the cause of the disease. Director's Exhibit 32. Dr.

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3 On October 15, 1999, Dr. Broudy completed a standard NIOSH x-ray form indicating his findings from his review of a chest x-ray dated April 24, 1999. Director's Exhibit 36. However, in an accompanying written report to this form, Dr. Broudy indicated that he interpreted a chest x-ray dated March 24, 1999, rather than April 24, 1999. *Ibid*. The administrative law judge relied on Dr. Broudy's error to find that there were six chest x-ray films of record rather than five. Decision and Order at 7, 11. Inasmuch as the administrative law judge's error is not dispositive of this case, however, we deem this error harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Broudy, after performing two pulmonary evaluations of claimant and reviewing additional medical records, diagnosed a chronic obstructive airways disease due to cigarette smoking, opined that claimant did not suffer from coal workers' pneumoconiosis, and found that claimant did not have a pulmonary disease caused by coal mine employment. Director's Exhibits 23, 29.

The administrative law judge, within a proper exercise of his discretion, determined that the opinion of Dr. Broudy was entitled to greater weight because Dr. Broudy was Board-certified in internal medicine as well as in the subspecialty of pulmonary medicine, compared to Dr. Younes, whose medical qualifications were not in the record. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); Decision and Order at 12. The administrative law judge additionally permissibly accorded determinative weight to Dr. Broudy's opinion inasmuch as it was supported by specific, clinical findings, consisting of two pulmonary examinations of claimant on April 8, 1993 and July 29, 1999, negative x-ray interpretations, pulmonary function tests indicative of asthma or other types of obstructive airways diseases, arterial blood gas studies, and a review of additional medical reports of record. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Decision and Order at 12. Hence, the administrative law judge rationally found that Dr. Broudy's opinion, that claimant does not have coal worker's pneumoconiosis, was documented and well reasoned, and therefore, entitled to greater weight. *See Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 12-13. The administrative law judge permissibly found that Dr. Younes's opinion lacked documentation or an adequate rationale because Dr. Younes opined that claimant suffered from chronic obstructive pulmonary disease, chronic bronchitis, and emphysema caused by cigarette smoking with occupational dust exposure as a contributory factor, but failed to explain how the three conditions were related to occupational dust exposure. *See Clark, supra* (administrative law judge may reject opinion where physician fails to adequately explain diagnosis); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 1-147 n.2 (1984); Decision and Order at 12. Accordingly, because the administrative law judge properly found that Dr. Broudy's opinion was entitled to dispositive weight, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis relevant to Section 718.202(a)(4).

Because the administrative law judge properly found that claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement in this Part 718 case, we

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4 The opinion of Dr. Gill is insufficient to establish the existence of pneumoconiosis inasmuch as Dr. Gill did not state the etiology of claimant's chronic obstructive pulmonary disease. *See* 20 C.F.R. §§718.201, 718.202; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); Director's Exhibit 32.

affirm the administrative law judge's finding that claimant is not entitled to benefits. *See Trent, supra*; *Perry, supra*.

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

5 Claimant's failure to affirmatively establish the existence of pneumoconiosis, a requisite element of entitlement, eliminates the need to address the administrative law judge's total disability and causation determinations. *See Trent, supra; Perry, supra.*