

BRB No. 98-0265 BLA

RANDOLPH HACKNEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
EASTERN COAL CORPORATION	)	
	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

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

Randolph Hackney, McAndrews, Kentucky, *pro se*.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (97-BLA-0152) of Administrative Law Judge Daniel F. Sutton 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). The administrative law judge accepted the parties' stipulation to eighteen years of coal mine employment and employer's concession that it was the responsible operator. The administrative law judge found that the medical evidence failed to establish

either the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §§718.202(a), 718.204(c) and, accordingly, denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.<sup>1</sup>

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). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

To be entitled to benefits under 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Pursuant to Section 718.202(a)(1), the administrative law judge correctly found that “[a]ll of the x-rays were read as negative.” Decision and Order at 4; Director's Exhibits 15, 16, 31; Employer's Exhibits 1-3, 7. Therefore, we affirm the administrative law judge's finding that “[c]laimant has failed to establish the

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<sup>1</sup> We affirm the administrative law judge's findings regarding length of coal mine employment and responsible operator status as they are unchallenged on appeal and are not adverse to claimant. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

existence of pneumoconiosis by the x-ray evidence” pursuant to Section 718.202(a)(1).<sup>2</sup>

Pursuant to Section 718.202(a)(2) and (3), the administrative law judge correctly found that the record contains no biopsy evidence and that the presumptions at Sections 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. Decision and Order at 4-5; see 20 C.F.R. §§718.304, 718.305, 718.306. We therefore affirm these findings.

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<sup>2</sup> In charting only seven of the nine negative readings, Decision and Order at 4, the administrative law judge apparently overlooked two negative readings by Drs. Scott and Wheeler that could only have supported his finding. Employer's Exhibits 1, 2.

Pursuant to Section 718.202(a)(4), the administrative law judge considered all six medical opinions of record. Drs. Dineen, Powell, and Broudy<sup>3</sup> examined and tested claimant, found his chest x-ray negative and his examination and objective test results normal, and concluded that he does not have pneumoconiosis. Director's Exhibit 31; Employer's Exhibit 3. Dr. Fino reviewed the medical evidence of record and reached the same conclusion. Employer's Exhibit 6. Dr. Younes examined and tested claimant; he indicated that claimant's chest x-ray, examination, and objective test results were normal, and he diagnosed chronic bronchitis due to occupational dust exposure. Director's Exhibit 13; Employer's Exhibit 4. The administrative law judge recognized that Dr. Younes' diagnosis could fit within "the broad legal definition of pneumoconiosis," see 20 C.F.R. §718.201, but permissibly concluded that the diagnosis was not well explained "in view of Dr. Younes' normal diagnostic results," and found that his opinion was "outweighed by the opinions from Drs. Dineen, Powell, Broudy[,] and Fino." Decision and Order at 5. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Kuchwara v. Director, OWCP*, 7 BLR 1-167, 1-170 (1984). Because the administrative law judge properly weighed the medical opinions and substantial evidence supports his finding, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).

Because claimant has failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a necessary element of entitlement under Part 718, we affirm the denial of benefits. See *Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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<sup>3</sup> Dr. Broudy examined claimant twice, first in 1994 and again in 1996. Employer's Exhibit 3.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge