

BRB No. 98-1456 BLA

SHIRREL A. FIELDS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORFOLK & WESTERN RAILWAY	)	DATE ISSUED:
COMPANY	)	
	)	
Employer-Respondent	)	
	)	
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 and Order Denying Reconsideration of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Shirrel A. Fields, Pinsonfork, Kentucky, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order Denying Benefits and Order Denying Reconsideration (97-BLA-0581) of Administrative Law Judge Pamela Lakes Wood 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 properly considered the instant claim, filed on January 17, 1995, pursuant to the permanent regulations at 20 C.F.R. Part 718. After crediting claimant with seven years of coal mine employment, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits. Claimant filed with the administrative law judge a request for reconsideration. In her Order Denying Reconsideration, the administrative law judge reaffirmed her finding that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a)(1)-(4) and,

accordingly, again denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not presently intend to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the 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); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In considering the x-ray evidence of record in this case pursuant to Section 718.202(a)(1), the administrative law judge correctly stated that the record contains twenty-four x-ray interpretations of ten different x-rays. Decision and Order at 7. The administrative law judge further correctly found that only two of these interpretations were positive for pneumoconiosis; specifically, Dr. Bassali's positive reading of the April 30, 1996 x-ray, and Dr. Potter's positive reading of the film dated June 17, 1997. *Id.*; Claimant's Exhibits 1, 2. After correctly noting that Dr. Bassali is a dually-qualified B reader/Board-certified radiologist and that Dr. Potter's qualifications are not contained in the record, the administrative law judge properly found that the positive readings of these two physicians were insufficient to establish the existence of pneumoconiosis in view of the quantity and quality of the negative x-ray evidence of record. See *Staton v. Norfolk & Western Railroad 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); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); Decision and Order at 7, 16. Specifically, the administrative law judge found that Dr. Bassali's positive reading of the April 30, 1996 film was outweighed by the negative interpretations of the same film from Drs. Halbert, Wheeler, Scott and Kim, all of whom are, like Dr. Bassali, Board-certified radiologists and B readers. Decision and Order at 7; Director's Exhibit 37; Claimant's Exhibit 1; Employer's Exhibits 1, 2. The administrative law judge also found that Dr. Potter's positive reading of the June 17, 1997 film was outweighed by Dr. Sargent's negative reading of the same film since Dr. Sargent, a Board-certified radiologist and B reader, possessed qualifications superior to those of Dr. Potter. Decision and Order at 7; Claimant's Exhibit 2; Employer's Exhibit 8. We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish

the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), as it is supported by substantial evidence. See *Staton, supra*; *Woodward, supra*; *Edmiston, supra*.

Additionally, the administrative law judge properly found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2), since there is no autopsy or biopsy evidence in the record. Decision and Order at 16. The administrative law judge also properly found that claimant cannot establish the existence of pneumoconiosis under Section 718.202(a)(3), as none of the presumptions thereunder applies.<sup>1</sup> *Id.* We, therefore, also affirm the administrative law judge's finding that the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a)(2) or (a)(3).

In considering whether the medical opinion evidence was sufficient to establish pneumoconiosis under Section 718.202(a)(4), the administrative law judge properly discounted the only medical opinion which, if credited, could support a finding of pneumoconiosis, *i.e.*, Dr. Mettu's opinion. Decision and Order at 17; Director's Exhibits 10, 19, 37; Claimant's Exhibits 1, 14. Dr. Mettu, claimant's treating physician, who conducted physical examinations and administered pulmonary function studies on several occasions between November 1994 and June 1997, opined that claimant suffers from pneumoconiosis and suffers from a totally disabling pulmonary impairment due to his exposure to coal rock dust. Director's Exhibits 10, 19, 37; Claimant's Exhibits 1, 14. The administrative law judge properly found that Dr. Mettu failed to explain adequately his diagnosis of pneumoconiosis in any of his four brief reports in the record. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); Decision and Order at 17; Director's Exhibits 10, 19, 37; Claimant's Exhibits 1, 14. The administrative law judge concluded that the only rationale Dr. Mettu seemed to provide in his letters for his opinion that claimant suffers from pneumoconiosis is that claimant worked for many years in the coal mines. Decision and Order at 17. The administrative law judge's characterization of Dr. Mettu's rationale for his opinion was reasonable and supported by substantial evidence since, in the one page letters from Dr. Mettu, which are dated August 8, 1995, May 30, 1996, September 3, 1996 and June 10, 1997, Dr. Mettu notes that claimant worked for many years in and around the coal mines, but does not specifically indicate what factors he relied upon in opining that

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<sup>1</sup>The record does not contain evidence of complicated pneumoconiosis and, consequently, claimant does not qualify for the presumption at 20 C.F.R. §718.304. The instant claim was filed after January 1, 1982 and, therefore, the presumption at 20 C.F.R. §718.305 is inapplicable. Additionally, as this is not a survivor's claim, the presumption at 20 C.F.R. §718.306 does not apply.

claimant has pneumoconiosis. Director's Exhibits 19, 37; Claimant's Exhibits 1, 4.

Furthermore, the administrative law judge properly found that the contrary opinions of record from Drs. Fritzhand, Dahhan, Morgan, Loudon and Fino were well-reasoned and documented. *See Clark, supra; Tackett, supra*; Decision and Order at 17; Director's Exhibits 11, 34, 37; Employer's Exhibits 4-7. The administrative law judge properly accorded greatest weight to Dr. Fino's opinion on that basis, after noting that Dr. Fino personally examined claimant on October 22, 1996, Director's Exhibit 37, and after concluding that the doctor persuasively explained at the hearing the rationale for his conclusions, and supported his conclusions with the available medical data. Decision and Order at 17; Director's Exhibit 37; 1997 Hearing Transcript at 49 *et seq.* The administrative law judge further properly found that Dr. Fino's opinion was corroborated by the opinions of Drs. Dahhan and Fritzhand, both of whom examined claimant, and the opinions of Drs. Morgan and Loudon, who reviewed the medical evidence of record. *See Clark, supra; Tackett, supra*; Decision and Order at 17; Director's Exhibits 11, 34, 37; Employer's Exhibits 4-7. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Inasmuch as claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a requisite element of entitlement under Part 718, the administrative law judge properly denied benefits. *Trent, supra; Gee, supra; Perry, supra.*

Accordingly, the administrative law judge's Decision and Order Denying Benefits and Order Denying Reconsideration are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge