

BRB No. 99-1319 BLA

DON C. SHINALL)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SEA "B" MINING COMPANY/ JEWELL RIDGE COAL COMPANY)	DATE ISSUED:
)	
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 of Lawrence P. Donnelly, Administrative Law Judge, United States Department of Labor.

Don C. Shinall, Cedar Bluff, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart, Eskridge), Abingdon, Virginia, 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 - Denying Benefits (98-BLA-0898) of Administrative Law Judge Lawrence P. Donnelly on a duplicate 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 first claim for benefits on November 10, 1987. The district director denied benefits on March 31, 1988, determining that although claimant established total disability pursuant to 20 C.F.R. §718.204(c), he failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) or total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Director's Exhibit 35. Although claimant filed a letter dated May 24, 1988, indicating that he would pursue the matter, no further action was taken, and the claim was finally denied. Decision and Order at

2. Claimant filed a duplicate claim on June 23, 1994, and Administrative Law Judge Jeffrey Tureck found that the parties stipulated to thirty-four years of coal mine employment, but that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 and denied benefits on February 7, 1996. Director's Exhibit 36. Claimant filed another duplicate claim on September 22, 1997. Director's Exhibit 1. Administrative Law Judge Lawrence P. Donnelly (the administrative law judge) reviewed all the newly submitted evidence and determined that claimant failed to establish a material change in conditions pursuant to Section 725.309. Accordingly, benefits were denied. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. 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 will consider 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). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent 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 the instant case, the administrative law judge properly reviewed all the newly submitted evidence pursuant to Section 725.309 to determine whether claimant established a material change in conditions on any element of entitlement previously found against claimant. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995); *cert. denied*, 117 S.Ct. 763 (1997); *Cline v. Westmoreland Coal Co.*, 21 BLR 1-69 (1997). Because claimant previously failed to establish the existence of pneumoconiosis at Section 718.202(a) or total disability due to pneumoconiosis at Section 718.204(b), the administrative law judge considered whether the newly submitted evidence supported a finding under either of these Sections.

The administrative law judge reviewed all the newly submitted x-ray evidence pursuant to Section 718.202(a)(1) and found that the only positive x-ray reading was made by Dr. Forehand, a B-reader,¹ of the October 20, 1997 film. Director's Exhibit 20. The

¹ 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 Safety and Health. See 42 C.F.R. §37.51; *Mullins Coal Company, Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

administrative law judge, however, found that this x-ray film was reread by Drs. Scott and Wheeler, both of whom are B-readers and Board-certified radiologists, as negative for pneumoconiosis. Director's Exhibit 33. Accordingly, the administrative law judge properly accorded greater weight to the readings of Drs. Scott and Wheeler, who were better qualified, and found, within his discretion, that "the overwhelming majority of the recent x-ray interpretations, including those by dual qualified B-readers and Board-certified radiologists, are negative for pneumoconiosis." Decision and Order at 4, 7; 20 C.F.R. §718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Napier v. Director, OWCP*, 890 F.2d 669, 13 BLR 2-117 (4th Cir. 1989). We therefore affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1). As claimant did not submit any autopsy or biopsy evidence, and none of the presumptions contained at Sections 718.304, 718.305 or 718.306 are applicable, the administrative law judge also properly found that claimant could not establish the existence of pneumoconiosis at Section 718.202(a)(2) and (3).

The administrative law judge next considered the three newly submitted medical opinions pursuant to Section 718.202(a)(4). Dr. Forehand diagnosed coal workers' pneumoconiosis, while Drs. Hippensteel and Fino did not. Employer's Exhibits 1, 14, 15; Director's Exhibits 14, 15. The administrative law judge permissibly accorded less weight to Dr. Forehand's opinion because he found the opinion to be "equivocal and ambiguous." See *Taylor v. Evans and Gambrel Co., Inc.*, 12 BLR 1-83 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); see also *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Stiltner v. Island Creek Coal Co.*, 86 F.2d 337, 20 BLR 2-246 (4th Cir. 1996); *Doss v. Director, OWCP*, 854 F.2d 1316, 19 BLR 2-181 (4th Cir. 1995). In addition, the administrative law judge permissibly credited the opinions of Drs. Hippensteel and Fino as they were unequivocal in their diagnosis that claimant did not have clinical or statutory pneumoconiosis and they were Board-certified pulmonologist. *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); see *Doss, supra*. We therefore affirm the administrative law judge's weighing of the medical opinions at Section 718.202(a)(4) and his finding that the evidence is insufficient to establish the existence of pneumoconiosis. As claimant failed to establish the existence of pneumoconiosis by the newly submitted evidence, the administrative law judge properly found that claimant could not establish that pneumoconiosis contributed to his total disability at Section 718.204(b). See *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995); *Jewell Smokeless Coal Co. v. Street*, 42 F.3d 241, 19 BLR 2-1 (4th Cir. 1994).

Since claimant failed to establish any element of entitlement previously found against him, therefore, the administrative law judge properly found that he failed to establish a material change in conditions. *Rutter, supra*; *Cline, supra*.

Accordingly, the Decision and Order - Denying Benefits of the administrative law

judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge