

AUDREY H. SMITH)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order on Remand of James L. Guill, Administrative Law Judge, United States Department of Labor.

Audrey H. Smith, Bucyrus, Ohio, *pro se*.

Richard A. Seid (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, without legal representation, appeals the Decision and Order on Remand (84-BLA-0771) of Administrative Law Judge James L. Guill 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). This case is on appeal before the Board for the second time. In his initial Decision and Order (80-BLA-8024), the administrative law judge credited claimant with nine and one-half years of qualifying coal mine employment, and adjudicated claimant's original claim, filed on June 20, 1979, pursuant to the provisions at 20 C.F.R. Part 410, Subpart D. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis

pursuant to 20 C.F.R. §410.414(a) and total disability pursuant to 20 C.F.R. §410.424(a), but insufficient to establish that claimant's pneumoconiosis arose out of coal mine employment or that his total disability was due to pneumoconiosis. Accordingly, benefits were denied.

Claimant did not file a timely appeal or request for modification, but filed a duplicate claim on September 9, 1983. The administrative law judge applied his earlier findings and held that claimant had already established the existence of pneumoconiosis and total disability. The administrative law judge found, however, that claimant had not submitted any new evidence to establish that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c); and the new evidence that was submitted subsequent to the denial of the initial claim was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Consequently, the administrative law judge again denied benefits.

On appeal, the Board affirmed the administrative law judge's findings pursuant to Section 718.203(c) as supported by substantial evidence, and affirmed the denial of benefits. *Smith v. Director, OWCP*, BRB No. 86-968 BLA (May 24, 1988) (unpublished).

Claimant filed a petition for review with the United States Court of Appeals for the Fourth Circuit, and attached a letter from his treating physician, Dr. Manthey, stating that he had mistakenly submitted the wrong medical report when the claim was under consideration before the administrative law judge, and that the physician had intended to submit a report which would have supported the claim. In light of this letter, the court ordered that this case be remanded to allow claimant an opportunity to supplement the record. *Smith v. Director, OWCP*, No. 88-1327 (4th Cir., March 2, 1989) (unpublished).

On remand, the administrative law judge issued an Order Allowing Post Hearing Evidence on November 30, 1989, granting claimant thirty days within which to submit supplementary evidence, and granting the Director, Office of Workers' Compensation Programs (the Director), an additional thirty days to respond thereto. Claimant subsequently submitted a report from Dr. Manthey dated December 28, 1989, as well as an x-ray interpretation by Dr. Patel of an October 31, 1988 film, and a report by Dr. Buddington of claimant's October 31, 1988 examination and objective test results.

The administrative law judge found the evidence insufficient to establish that claimant's pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(c), or that total disability was due to pneumoconiosis pursuant to Section 718.204(b), and accordingly denied benefits.

In the instant appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director

responds, urging affirmance.

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 in accordance with 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 pursuant to 20 C.F.R. Part 718, claimant must establish, 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 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).

In evaluating claimant's post-hearing evidence, the administrative law judge properly found that the reports of Drs. Patel and Buddington were insufficient to establish entitlement, since Dr. Patel's x-ray interpretation did not identify the etiology of claimant's pneumoconiosis pursuant to Sections 718.203(c), and Dr. Buddington stated that since he did not have the results of a current x-ray, he could not comment on the cause of claimant's moderate chronic pulmonary disease. Decision and Order on Remand at 4, 5; Claimant's Exhibit 2. The administrative law judge permissibly discounted Dr. Manthey's opinion as unreasoned, since the physician did not address claimant's smoking history or the effects of his twenty-four years of industrial exposure to rubber fumes subsequent to coal mine employment, see generally *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985); *Piniensky v. Director, OWCP*, 7 BLR 1-171 (1984); *Crosson v. Director, OWCP*, 6 BLR 1-809 (1984); and did not explain the basis for his conclusion that claimant was totally disabled due to pneumoconiosis arising out of coal mine employment. Decision and Order on Remand at 4; Claimant's Exhibit 1; see generally *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988). We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that the evidence of record is insufficient to establish either that claimant's pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(c) or that his total disability was due to pneumoconiosis pursuant to Section 718.204(b), and consequently we affirm his denial of benefits. *Trent, supra*.

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

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge