

BRB No. 92-2567 BLA

MAJOR SERGENT )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SHIELDS MINING COMPANY )  
 )  
 and )  
 )  
 OLD REPUBLIC INSURANCE COMPANY) DATE ISSUED:  
 )  
 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 of Clement J. Kichuk, Administrative Law Judge, United States Department of Labor.

Major Sergent, Baxter, Kentucky, *pro se*.

Michael W. Vella (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (88-BLA-3004) of Administrative Law Judge Clement J. Kichuk 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). Claimant filed a claim for benefits on April 15, 1983. After finding that claimant established at least ten years of coal mine employment, the administrative law judge considered the claim pursuant to 20 C.F.R. Part 718 and found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals this denial.

Employer responds in support of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered the x-ray evidence of record, which consists of nine interpretations of two x-rays. See Director's Exhibits 14, 15, 22; Employer's Exhibits 1-3. All of these interpretations are negative for the existence of pneumoconiosis. As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is affirmed as it is supported by substantial evidence.

There is no autopsy or biopsy evidence in the record in this case, thus the existence of pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(2). Also, the existence of pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(3) as there are no presumptions that apply in this case.<sup>1</sup>

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered

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<sup>1</sup>The presumption at 20 C.F.R. §718.304 is not applicable as there is no evidence that the deceased miner suffered from complicated pneumoconiosis. The fifteen year presumption contained in 20 C.F.R. §718.305 is also not applicable as claimant's application for benefits was filed after January 1, 1982. 20 C.F.R. §718.305(e). Further, the presumption at 20 C.F.R. §718.306 applies only to survivor's claims filed prior to June 30, 1982 wherein the miner died on or before March 1, 1978. 20 C.F.R. §718.306(a).

the medical opinion evidence of record. The record contains eight medical opinions, three by Dr. Dahhan and one each by Drs. Broudy, Fino, Lane, Anderson and Chandler. See Director's Exhibits 12, 22; Employer's Exhibits 4, 5, 7, 8. None of these physicians diagnosed pneumoconiosis. As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed as it is supported by substantial evidence. Further, as claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, the administrative law judge's denial of benefits is affirmed. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Accordingly, the administrative law judge's Decision and Order 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