

BRB Nos. 97-0187 BLA

CHRISTINE BLANTON)
(Widow of JOHN F. BLANTON))
)
Claimant-Petitioner)
)
v.)
)
ELM COAL CORPORATION)
)
and)
)
AMERICAN BUSINESS & MERCANTILE)
MUTUAL, INCORPORATED)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

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

Christine Blanton, Oil Springs, Kentucky, *pro se*.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant¹, without the assistance of counsel, appeals the Decision and Order (95-BLA-2348) of Administrative Law Judge Daniel J. Roketenetz denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

¹ Claimant is Christine Blanton, the miner's widow. The miner, John F. Blanton, filed a claim for benefits on January 25, 1989 and died on February 27, 1994. Director's Exhibits 1, 53. Claimant filed a survivor's claim on July 19, 1994. Director's Exhibit 53.

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied on both the miner's and the survivor's claims. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate.

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. *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 into the Act 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 in the miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). In a survivor's claim filed after January 1, 1982, the evidence must establish that the decedent miner's death was due to, or hastened by, pneumoconiosis. See *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Willis v. Birchfield Mining Co.*, 15 BLR 1-59 (1991); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. Pursuant to Section 718.202(a)(1), the administrative law judge considered the x-ray evidence, which consists of seventy-five interpretations of fifteen x-rays, and rationally found that the preponderance of the interpretations by physicians who are both B-readers and board-certified radiologists are negative for the existence of pneumoconiosis. Decision and Order at 6; Director's Exhibit 17-20, 23, 35-38, 40-46, 49, 51, 53; see *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts, supra*. Thus, we affirm the administrative law judge's findings that claimant failed to establish that the miner had pneumoconiosis pursuant to Section 718.202(a)(1).

Pursuant to Section 718.202(a)(2), the administrative law judge considered the

reports of Dr. Boswell, the autopsy prosector, and Dr. Naeye, who reviewed the autopsy report, and properly found that neither of these physicians found evidence of pneumoconiosis. Decision and Order at 7; Director's Exhibit 53. Thus, we affirm the administrative law judge's finding that claimant failed to establish the miner had pneumoconiosis pursuant to Section 718.202(a)(2).

With respect to Section 718.202(a)(3), claimant may establish that the miner had pneumoconiosis by establishing that the presumptions described in 20 C.F.R. §§718.304, 718.305, or 718.306 are applicable. 20 C.F.R. §718.202(a)(3). The presumption at Section 718.304 is applicable in cases where the evidence establishes that the miner has, or had, complicated pneumoconiosis. In the instant case, the record contains an x-ray interpretation in which Dr. Dineen indicates the presence of a size B opacity. Director's Exhibit 53. The administrative law judge properly noted, however, that Dr. Dineen further opined that "[t]he absence of surrounding small parenchymal opacities is against this being a manifestation of pneumoconiosis and more likely that the radiographic abnormality represents post-inflammatory scarring." Decision and Order at 5, 7; Director's Exhibit 53. The record also contains interpretations of x-rays dated December 18, 1993 and January 17, 1994, in which Dr. Bassali indicates the presence of size A and B opacities. Director's Exhibit 53. The administrative law judge, however, permissibly assigned Dr. Bassali's interpretations less weight in light of the greater number of negative interpretations of these x-rays by physicians who are also B-readers and board-certified radiologists. Decision and Order at 6; see *Staton, supra*; *Edmiston, supra*; *Lafferty, supra*; *Trent, supra*; *Roberts, supra*. Further, because the miner's claim was filed after January 1, 1982, and the miner died after March 1, 1978, the presumptions at Sections 718.305 and 718.306 do not apply. Thus, we affirm the administrative law judge's finding that claimant failed to establish that the miner had pneumoconiosis pursuant to Section 718.202(a)(3).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinion evidence of record, which consists of the opinions of seventeen physicians, five of whom found the existence of pneumoconiosis. Decision and Order at 8-14; Director's Exhibit 9-11, 14, 23, 39, 46, 49, 51, 53. The administrative law judge permissibly found that the opinions of Drs. Myers, Fritzhand, Anderson, Hieronymous, and Lane, the physicians diagnosing pneumoconiosis, are outweighed by the opinions of Drs. Branscomb, Broudy, Dahhan, Wright, Vuskovich, Mettu, Boswell and Naeye, the physicians who found that pneumoconiosis is not present, based on their qualifications and because their opinions constitute the preponderance of the medical opinion evidence. Decision and Order at 14; Director's Exhibit 9-11, 14, 23, 39, 46, 49, 51, 53; see *Staton, supra*; *Edmiston, supra*; *Lafferty, supra*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Perry, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge is empowered to weigh the evidence and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson, supra*. Consequently, we affirm the administrative law judge's finding that claimant failed to establish that the miner had

pneumoconiosis pursuant to Section 718.202(a). Because claimant has failed to establish that the miner had pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits on both the miner's and the survivor's claims. See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Anderson, supra*; *Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge