

BRB No. 97-0677 BLA

IRMAL R. CARROLL)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
COLEMAN DRILLING)	
)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Party-in-Interest)	

Appeal of the Decision and Order of J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Jennifer U. Toth (J. Davitt McAteer, Acting 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, the United States Department of Labor.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0721) of Administrative Law Judge J. Michael O'Neill 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). The administrative law judge credited claimant with five years of coal mine employment and found employer to be the responsible operator, but concluded that the medical evidence failed to establish either the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §§718.202(a), 718.204(c). Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge erred in his weighing of the medical evidence pursuant to Sections 718.202(a) and 718.204(c). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance. Employer has not responded to claimant's appeal.¹

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 718.202(a)(1), claimant contends that the administrative law judge erred by finding that the x-ray evidence failed to establish the existence of pneumoconiosis when a Board-certified radiologist and B-reader interpreted the June 16, 1995 x-ray as positive for the disease. Claimant's Brief at 1. The record contains five readings of three x-rays. Four readings are negative and one is positive. Three of the four negative readings are by Board-certified radiologists and B-readers. Director's Exhibits 9, 10, 17. The single positive reading of the June 1995 x-ray was also rendered by a Board-certified radiologist and B-reader. Director's Exhibit 15. The administrative law judge discussed all of these readings in light of the physicians' radiological credentials. Decision and Order at 5. Since all of the readings of the May 19, 1994 and March 1, 1996 x-rays were negative, the administrative law judge found these x-rays to be negative for pneumoconiosis. *Id.* The administrative law judge found the June 16, 1995 film to be positive based on Dr. Rubenstein's uncontradicted 1/1 reading of that film. *Id.* Weighing all three x-rays together, the administrative law judge concluded that "claimant has failed to establish that he has pneumoconiosis by a preponderance of the x-ray evidence." *Id.* Contrary to claimant's contention, the administrative law judge considered both the quantity and quality of the x-ray evidence and permissibly determined that the weight of the x-ray evidence was negative for the existence of pneumoconiosis. See *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). Because the administrative law judge properly weighed the x-rays, we affirm his finding pursuant to Section 718.202(a)(1).

¹ We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment, responsible operator status, and pursuant to 20 C.F.R. §§718.202(a)(2), (3) and 718.204(c)(1)-(3). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to Section 718.202(a)(4), claimant contends that the administrative law judge erred by finding Dr. Fritzhand's report insufficiently documented to constitute evidence of pneumoconiosis. Claimant's Brief at 2. The record contains two medical opinions. Dr. Mettu examined and tested claimant. Based on his observations of a negative chest x-ray, normal chest examination, non-qualifying² blood gas study, chest pains, and abnormal EKG, he diagnosed chronic bronchitis which he did not link to coal dust exposure, and chest pains. Director's Exhibit 7; see 20 C.F.R. §718.201. Dr. Fritzhand examined claimant, administered pulmonary function and blood gas studies that resulted in nonqualifying values and an EKG that showed abnormal results. Director's Exhibit 15. Dr. Fritzhand did not indicate that he took or read any chest x-rays; instead, he quoted claimant's own statement that "he has had 'four or five x-rays that showed black lung.'" *Id.* Citing an "adequate history of exposure to coal mine dust and chest x-ray changes apparently consistent for a diagnosis of coal mine workers' pneumoconiosis," Dr. Fritzhand diagnosed "H/O pneumoconiosis."³ *Id.*

"A 'documented' report sets forth the clinical findings, observations, facts, *etc.*, on which the doctor has based his diagnosis." *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). Contrary to claimant's contention, the administrative law judge permissibly accorded "little weight" to Dr. Fritzhand's opinion because he found that the physician's "reliance on x-rays that he did not identify, provide, or interpret lends little credence to his opinion that the claimant has pneumoconiosis." Decision and Order at 6; see *Fields, supra*. Substantial evidence supports the administrative law judge's conclusion that Dr. Fritzhand's report is "poorly documented," Decision and Order at 6, as the physician did not set forth specific x-rays in support of his diagnosis, but simply relied on an alleged history of multiple, positive x-rays.⁴ Director's Exhibit 15. Moreover, the administrative law judge

² A "qualifying" objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (c)(2).

³ Presumably, "H/O" means "history of."

⁴ At one point, Dr. Fritzhand stated that the "patient has **apparently** obtained multiple chest x-rays of good diagnostic quality over the years. These studies have revealed coal mine workers' pneumoconiosis." Director's Exhibit 15 (emphasis supplied).

permissibly questioned Dr. Fritzhand's diagnosis as based on a coal mine employment history of ten to twelve years, when the record established only five years of coal mine employment. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). Because the administrative law judge properly weighed the medical opinions, we affirm his finding that claimant “failed to meet his burden of proving that he suffers from pneumoconiosis under 20 C.F.R. §718.202(a)(4).” Decision and Order at 7.

Because claimant has failed to establish the existence of pneumoconiosis, a necessary element of entitlement under Part 718, the denial of benefits is affirmed. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge