BRB No. 99-1152 BLA

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| JOHN P. CHURCH | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| BEBE COAL CORPORATION | ) | DATE ISSUED: |
| | ) | |
| and | ) | |
| | ) | |
| OLD REPUBLIC INSURANCE COMPANY | ) | |
| | ) | |
| Employer/Carrier-Respondent | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

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

John P. Church, Sandy Hook, Kentucky, *pro se*.

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

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (98-BLA-6083) of Administrative Law Judge Daniel J. Roketenetz 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 found that claimant established thirty years of coal mine employment and, based on the filing date, applied the regulations found at 20 C.F.R. Part 718 to this claim. The administrative law

judge, reviewing all the evidence of record, found that claimant failed to establish modification and entitlement to benefits. 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.[1] 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 order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

[1] The administrative law judge noted employer's contention that it should not be named the responsible operator, but decided not to address further the responsible operator issue, given that benefits were denied in the instant claim. Employer notes, in its brief, its continued contest of its designation as responsible operator in order to preserve the issue in the event of further proceedings, but in light of the administrative law judge's denial of benefits does not make any arguments on the issue in this appeal. Employer's Brief 3-4.

In considering whether the existence of pneumoconiosis was established, the administrative law judge determined that claimant failed to establish the presence of pneumoconiosis based on the x-ray evidence at 20 C.F.R. §718.202(a)(1). The evidence of record contains ten x-ray readings, of which only two are positive for the existence of pneumoconiosis. In weighing the x-ray readings, the administrative law judge permissibly accorded greater weight to the readings of B-readers and Board certified radiologists.[2] The only B-reader who made a positive reading of pneumoconiosis was Dr. Bassali, while the administrative law judge found that "several B-readers read the x-rays as negative." Director's Exhibit 31; Decision and Order at 6-7. Thus, the administrative law judge permissibly accorded "great weight" to the negative readings by the better qualified readers and found that the evidence failed to establish the existence of pneumoconiosis. *Staton v. Norfolk & Western Railway Co.*, 65 F.2d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). We therefore affirm the administrative law judge's finding that claimant failed to establish the presence of pneumoconiosis at Section 718.202(a)(1). Furthermore, the administrative law judge properly found that as the evidence of record contained no autopsy or biopsy evidence, and none of the presumptions found at 20 C.F.R. §§718.304, 718.305, 718.306 were applicable, the existence of pneumoconiosis was not established at Section 718.202(a)(2) or (3). 20 C.F.R. §718.202(a)(2), (3).

The administrative law judge next considered all four medical opinions of record at Section 718.202(a)(4) and found that Drs. Sundaram and Fritzhand diagnosed the presence of pneumoconiosis. The administrative law judge, however, found that Dr. Fritzhand "appears to rely solely upon the length of the claimant's exposure to coal mine dust," to support his finding of pneumoconiosis and offers "no medical substantiation for his conclusion" and therefore, within his discretion as fact-finder, permissibly found that Dr. Fritzhand's opinion was not well-reasoned or well-documented. Regarding Dr. Sundaram's opinion, the administrative law judge permissibly accorded it little weight as Dr. Sundaram relied on a positive x-ray reading which was subsequently re-read negative, and as Dr. Sundaram failed

[2] 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).

to document or explain his conclusions. Decision and Order at 9; Director's Exhibits 10, 26; *Church v. Eastern Associated Coal Co.*, 20 BLR 1-8 (1996); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Peskie v. U.S. Steel Corp.*, 8 BLR 1-126 (1985); *Pastva v. The Youghiogheny and Ohio Coal Co.*, 7 BLR 1-829 (1985); *Winters v. Director, OWCP*, 6 BLR 1-877 (1984). The administrative law judge permissibly found that Dr. Fino's opinion, which found no pneumoconiosis, entitled to greater weight as it was supported by Dr. Broudy's opinion, of no pneumoconiosis, and both opinions were supported by objective laboratory data, which rendered their opinions well-reasoned and well-documented. *See Church*, *supra*; *Carson*, *supra*. We therefore, affirm the administrative law judge's finding that the weight of the medical opinion evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(4). *Peabody v. Hill*, 123 F.2d 412, 21 BLR 2-192 (6th Cir. 1997); *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); *Director, OWCP v. Rowe*, 710 F.2d 251 (6th Cir. 1983).

Accordingly, as claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, he has failed to establish entitlement and we must affirm the administrative law judge's denial of benefits. *Worrell*, *supra*; *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*).

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting

Administrative Appeals Judge