BRB No. 05-0280 BLA

WILLIAM R. THOMPSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARCH OF WEST VIRGINIA/ APOGEE COAL COMPANY	)	DATE ISSUED: 08/26/2005
	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

William R. Thompson, Logan, West Virginia, *pro se.*

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2002-BLA-0109) of Administrative Law Judge Pamela Lakes Wood rendered 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). Based on the date of filing, August 18, 2000, the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718, and noted employer's stipulation that claimant established eight years of coal mine employment. Director's Exhibit 1; Hearing Transcript at 10. The administrative law judge found, however, that the evidence of record was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). Accordingly, benefits were denied.

On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter stating that he will not participate in this appeal.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Co.*, 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).

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. 20 C.F.R. §§718.3, 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*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge's Decision and Order denying benefits is rational, supported by substantial evidence, and in accord with law. It is, therefore, affirmed. Having found that the majority of the readings of each x-ray were negative for the existence of pneumoconiosis, that dually-qualified readers disagreed as to whether x-rays showed the existence of pneumoconiosis, and that the preponderance of the readings by the most qualified readers was negative, the administrative law judge determined that the x-ray evidence was, at best, in equipoise, since equally qualified readers disagreed, and could not establish the existence of pneumoconiosis. This was rational. Decision and Order at 5-6; Claimant's Exhibits 6-8; Employer's Exhibits 3-5, 10-18, 22; Director's Exhibits 14-15, 28-34; 20 C.F.R. §718.202(a)(4); *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Lemaster v. Imperial Colliery Co.*, 73 F.3d 358, 20 BLR 2-20 (4th Cir. 1995); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(*en* banc); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Simpson v. Director, OWCP*, 9 BLR 1-99, 1-100 (1986); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Isaacs v. Bailey Mining Co.*, 7 BLR 1-62, 1-63 n.2 (1984). Likewise, the administrative law judge's finding that the requirements of Section 718.202(a)(2)-(3) were not met is affirmed, as the record contains no biopsy evidence and the regulatory presumptions contained at 20 C.F.R. §§718.304, 718.305, 718.306, are inapplicable in this

living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. Decision and Order Denying Benefits at 6; Director's Exhibit 1; *Dixon*, 8 BLR 1-344.

Regarding the medical opinion evidence, the administrative law judge also permissibly found it to be in equipoise as the opinion of Dr. Ranavaya, diagnosing the existence of pneumoconiosis, was impermissibly based on positive x-ray and coal mining history, *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985), the opinion of Dr. Mullen did not attribute claimant's chronic obstructive pulmonary disease to coal mine employment, 20 C.F.R. §718.201, the opinion of Dr. Gaziano was not reasoned, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*), and the opinion of Dr. Cohen, diagnosing the existence of pneumoconiosis, did not outweigh the opinions of Drs. Dahhan, Zaldivar, Altmeyer, Spagnolo and Castle, that claimant did not have clinical or legal pneumoconiosis. *See Ondecko*, 512 U.S. 267, 18 BLR 2A-1; *Clinchfield Coal Co. v. Fuller*, 180 F.3d 622, 21 BLR 2-654 (4th Cir. 1999); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Woody v. Balley Camp Coal Co.*, 73 F.3d 360, 20 BLR 2-113 (4th Cir. 1995); *Lemaster*, 73 F.3d 358, 20 BLR 2-20; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85; *Clark*, 12 BLR 1-149. Claimant's Exhibits 1, 2; Employer's Exhibits 1, 2, 7-9, 11,16, 19, 21, 23-27, 29; Director's Exhibit 29; Decision and Order Denying Benefits at 6-8. In addition, considering the conflicting x-ray evidence together with the inconsistent medical opinion evidence, the administrative law judge rationally concluded that the evidence failed to establish the existence of pneumoconiosis at Section 718.202(a). *See Ondecko*, 512 U.S. 267, 18 BLR 2A-1; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). As we have affirmed the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), an essential element of entitlement, we must also affirm the denial of benefits. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge