BRB No. 97-1149 BLA

BUEFORD RATLIFF	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED:
	)	
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 of Donald B. Jarvis, Administrative Law Judge, United States Department of Labor.

Bueford Ratliff, North Tazewell, Virginia, *pro se*.[1]

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

[1]Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision, but Mr. White is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-1380) of Administrative Law Judge Donald B. Jarvis 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 the miner with 21.57 years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge found the evidence insufficient to establish either a mistake in a determination of fact or a change in conditions pursuant to 20 C.F.R. §725.310,[2] and thus, he denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[2]Claimant filed a claim on June 11, 1994. Director's Exhibit 1. This claim was denied by the district director on November 16, 1994, Director's Exhibit 18, and July 14, 1995, Director's Exhibit 27. The bases of the district director's denial were claimant's failure to establish the existence of pneumoconiosis arising out of coal mine employment and total disability due to pneumoconiosis. *Id*. On February 6, 1996, claimant filed a request for modification. Director's Exhibit 29.

After consideration of the Decision and Order and the relevant evidence of record, we conclude that the administrative law judge's decision is supported by substantial evidence and contains no reversible error and, therefore, it is affirmed. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), based on his consideration of all of the x-ray evidence of record. Of the sixteen x-ray interpretations of record, fifteen readings are negative for pneumoconiosis, Director's Exhibits 14-17, 31-36; Employer's Exhibit 2, and one reading, which was provided by Dr. Bassali, is positive, Director's Exhibit 29. The administrative law judge correctly stated that "[w]hile Dr. Bassali is highly qualified to read x-rays for the presence of pneumoconiosis, equally qualified readers have found the December 7, 1995 x-ray negative for pneumoconiosis."[3] Decision and Order at 6. The administrative law judge properly accorded greater weight to the negative x-ray readings by physicians with superior qualifications. *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1).

Next, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) since the record does not contain any biopsy results demonstrating the presence of pneumoconiosis. In addition, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. *See* 20 C.F.R. §§718.304, 718.305, 718.306. The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Similarly, claimant is not entitled to the presumption at 20 C.F.R. §718.305 because he filed his claim after January 1, 1982. *See* 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, this claim is not a survivor's claim; therefore, the presumption at 20 C.F.R. §718.306 is also inapplicable.

Finally, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered all of the relevant medical opinions of record. The administrative law judge correctly stated that "no physician has diagnosed pneumoconiosis." Decision and Order at 8. Although Dr. Modi characterized claimant as a "[k]nown case of COPD," Director's

[3]Whereas Dr. Bassali, who is a Board-certified radiologist and a B-reader, read the December 7, 1995 x-ray as positive for pneumoconiosis, Director's Exhibit 29, Drs. Gogineni, Shipley, Spitz and Wiot, who are also Board-certified radiologists and B-readers, read the same x-ray as negative, Director's Exhibits 32, 33, 36. In addition, Dr. Sargent, who is a Board-certified radiologist and a B-reader, read the August 30, 1994 and July 20, 1995 x-rays as negative. Director's Exhibits 14, 31. Further, Drs. Shipley, Spitz and Wiot read the July 20, 1995 x-ray as negative. Director's Exhibits 34, 35.

Exhibit 11, the doctor did not attribute claimant's COPD to coal mine employment. Consequently, Dr. Modi's opinion does not satisfy the definition of pneumoconiosis under 20 C.F.R. §718.201. Drs. Fino and Sargent opined that claimant does not suffer from coal workers' pneumoconiosis. Director's Exhibit 31; Employer's Exhibits 2, 3. Lastly, Dr. Forehand opined that claimant does not suffer from a cardiopulmonary disease. Director's Exhibit 12. Thus, since the administrative law judge properly found that none of the doctors of record diagnosed pneumoconiosis or any chronic lung disease arising out of coal mine employment, *see Shoup v. Director, OWCP*, 11 BLR 1-110 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986), we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), as supported by substantial evidence.

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718.[4] *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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

[4]In view of our disposition of the case on the merits at 20 C.F.R. §718.202(a), we decline to address the administrative law judge's findings at 20 C.F.R. §718.204(c)(1)-(4).

REGINA C. McGRANERY
Administrative Appeals Judge