BRB No. 97-1287 BLA

ROBERT CRNOKRAK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CONSOLIDATION 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 Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Robert Crnokrak, Buckner, Illinois, *pro se*.

Michael F. Dahlen (Feirich/Mager/Green/Ryan), Carbondale, Illinois, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-12) of Administrative Law Judge Gerald M. Tierney 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). Considering entitlement pursuant to 20 C.F.R. Part 718, the administrative law found that the evidence of record was insufficient to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant generally asserts 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 indicating that he will not respond to 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. *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 the conclusions of law are rational, supported by substantial evidence, and in accordance with the 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).

To be entitled to benefits 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*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

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 Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The record contains two interpretations of a single x-ray taken on January 6, 1995. Dr. Gaziano, a B-reader, interpreted the x-ray as negative for the presence of pneumoconiosis. Director's Exhibit 14. The x-ray was read as positive by Dr. Shelton, who is board eligible in radiology. Director's Exhibit 15. The administrative law judge weighed the x-ray evidence and found that the positive interpretation rendered by Dr. Shelton was entitled to less weight than the negative interpretation rendered by Dr. Gaziano based on the comparative qualifications of the two physicians. Inasmuch as the administrative law judge properly weighed the x-ray evidence based on the qualifications of the interpreting physicians, we affirm the administrative law judge's finding that the evidence fails to establish the presence of pneumoniosis pursuant to 20 C.F.R. §718.202(a)(1). *See Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993).

Next, the administrative law judge correctly noted that the record contains no biopsy evidence and that therefore claimant failed to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). The administrative law judge also correctly found that the presumptions contained in 20 C.F.R. §§718.304, 718.305 and 718.306 were inapplicable to this case. The record contains no evidence of complicated pneumoconiosis and this is a living miner's claim filed on December 1, 1994. Director's Exhibit 1. Therefore, we affirm the administrative law judge's finding that claimant failed to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(3).

Finally, the administrative law judge found that claimant failed to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), noting that neither of the

two physicians of record opined that claimant suffers from pneumoconiosis. Dr. Tuteur, who examined claimant and took a work history, noted that claimant's chest x-ray was clear, that his blood gas study was normal, and that his pulmonary function study showed "a minimal obstructive ventilatory defect." *See* Employer's Exhibit 1. The doctor concluded that claimant suffered no "significant or radiographically significant coal workers' pneumoconiosis." *Id.* Dr. Sanjabi, who also examined claimant, did not diagnosis the presence of pneumoconiosis. Director's Exhibit 12. Thus, we affirm the administrative law judge's finding that the medical reports of record fail to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement under Part 718, we affirm the denial of benefits. *See Trent, supra; Perry, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge