BRB No. 97-0572 BLA

ISSAC COLEMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
HARMAN MINING CORPORATION	)	
	)	
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 Joan Huddy Rosenzweig, Administrative Law Judge, United States Department of Labor.

Issac Coleman, Grundy, Virginia, *pro se*.

Ronald E. Gilbertson (Kilcullen, Wilson Kilcullen), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, without the assistance of legal counsel,[1] appeals the Decision and Order (96-BLA-98) of Administrative Law Judge Joan Huddy Rosenzweig denying benefits on a request for modification in a duplicate 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 thirteen years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative

[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).

law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c)(1)-(4). The administrative law judge thus found that since the previous denial, the evidence was insufficient to establish a material change in conditions pursuant to 20 C..R. §725.309(d), or a change in conditions or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310. Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. 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 considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *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, are supported by substantial evidence, and are in accordance with 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 establish 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. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 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. In her consideration of the x-ray evidence, the administrative law judge noted that there were twenty-five negative and six positive x-ray readings submitted with the most recent claim and that the greatest number of the negative readings were by Board-certified radiologists and B-readers. Decision and Order at 4-6 The administrative law judge thus found that the preponderance of x-ray evidence was negative. Decision and Order at 6. As a result, the administrative law judge properly weighed the x-ray evidence and rationally accorded greater weight to the preponderance of x-ray interpretations by the readers with superior qualifications. *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by substantial evidence.

Further, the administrative law judge properly concluded that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) as there was no biopsy or autopsy evidence in the record. *See* 20 C.F.R. §718.202(a)(2); Decision and

Order at 9. In addition, the administrative law judge properly found that the presumptions enumerated at Section 718.202(a)(3) are inapplicable to this claim as the record contains no evidence of complicated pneumoconiosis, *see* 20 C.F.R. §718.304; claimant filed his claim after January 1, 1982, *see* 20 C.F.R. §718.305; and this is not a survivor's claim. *See* 20 C.F.R. §718.306; Decision and Order at 9. Consequently, we affirm the administrative law judge's finding that claimant is precluded from establishing the existence of pneumoconiosis pursuant to Section 718.202(a)(2)-(3).

In weighing the medical opinions of record, the administrative law judge also rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence pursuant to Section 718.202(a)(4). *Perry*, *supra*. In so finding, the administrative law judge acted within her discretion as fact-finder in concluding that the opinions of Drs. Modi and Sundaram, who opined that claimant suffered from pneumoconiosis, were outweighed by the medical opinions of Drs. Michos, Dahhan and Fino, who found that claimant's condition was unrelated to coal mine employment, after noting their superior qualifications and finding that their opinions were well-documented and reasoned and consistent with the objective medical evidence. *Clark*, *supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985) *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); Decision and Order at 6-10; Director's Exhibits 11, 14, 38; Claimant's Exhibit 1; Employer's Exhibits 1-2, 4, 13. Inasmuch as the administrative law judge weighed all of the medical opinions and rationally concluded that the preponderance of the evidence did not establish the existence of pneumoconiosis, we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) as it is supported by substantial evidence.

In considering whether total disability was established under Section 718.204(c)(1)-(2), the administrative law judge properly found that inasmuch as the pulmonary function study and blood gas study evidence of record was non-qualifying, total disability was not established pursuant to Section 718.204(c)(1)-(2).[2] *See* Decision and Order at 10. In addition, the administrative law judge correctly found that there is no evidence of cor pulmonale with right sided congestive heart failure, *see* 20 C.F.R. §718.204(c)(3), and establishing total disability by this method is precluded.

In considering whether total disability was established pursuant to Section 718.204(c)(4), the administrative law judge permissibly gave greater weight and credit to the opinions of Drs. Michos, Dahhan and Fino, that claimant was not totally disabled from a respiratory standpoint, based on their qualifications and since their opinions were supported

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[2] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

by the objective evidence. *See Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order at 10. Furthermore, since the administrative law judge properly found that the medical evidence was insufficient to establish total disability pursuant to Section 718.204(c), lay testimony alone cannot alter the administrative law judge's finding. *See* 20 C.F.R. §718.204(d)(2); *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). As claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) or total respiratory disability pursuant to Section 718.204(c), essential elements of entitlement, the administrative law judge correctly found that claimant failed to establish a material change in conditions since the prior denial pursuant to Section 725.309(d) as well as that claimant failed to establish a change in conditions or a mistake in a determination of fact since the previous denial pursuant to Section 725.310. *See Lisa Lee Mines v. Director, OWCP* [Rutter], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995); *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge