BRB No. 97-1440 BLA

BILLY RASNAKE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VIRGINIA POCAHONTAS 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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Billy Rasnake, Bee, Virginia, *pro se*.[1]

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

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (96-BLA-0572) of Administrative Law Judge Pamela Lakes Wood denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

[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. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). After crediting claimant with twenty-nine years of coal mine employment, 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). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue 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 findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance 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 under Part 718 in a living miner's claim, a claimant must establish the existence of 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); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

In determining whether the x-ray evidence of record was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge properly accorded greater weight to the interpretations rendered by physicians with the dual qualifications of B reader and Board-certified radiologist. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 7. All of the interpretations of claimant's x-rays rendered by readers with these qualifications are negative for pneumoconiosis. Employer's Exhibits 2-4, 7. The administrative law judge also noted that the only x-ray that was read as positive for pneumoconiosis, a June 23, 1993 film, was also read as negative by readers with equivalent or superior radiological qualifications.[2] Decision and Order at 7-8; Claimant's Exhibit 1;

[2]Drs. Pathak, Aycoth and Cappiello, each qualified as a B reader, interpreted claimant's June 23, 1993 x-ray as positive for pneumoconiosis. Claimant's Exhibit 1. However, four other physicians, Drs. Cooper, Fino, Spitz and Wiot interpreted this x-ray as negative for pneumoconiosis. Employer's Exhibit 7. Drs. Cooper and Fino

Employer's Exhibit 7. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Inasmuch as there is no biopsy evidence of record, the administrative law judge properly found that claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 8.

Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that the Section 718.304 presumption is inapplicable. See 20 C.F.R. §718.304. The administrative law judge also properly found that the Section 718.305 presumption is inapplicable because claimant filed the instant claim after January 1, 1982. See 20 C.F.R. §718.305(e). Finally, inasmuch as the instant claim is not a survivor's claim, the Section 718.306 presumption is also inapplicable. See 20 C.F.R. §718.306. Consequently, the administrative law judge properly found that claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(3).

In his consideration of whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge acted within his discretion in according less weight to Dr. Forehand's opinion because he failed to explain the basis for his finding that claimant suffered from pneumoconiosis. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 8; Director's Exhibit 11. The administrative law judge also concluded that Dr. Castle's finding that claimant did not suffer from pneumoconiosis was entitled to additional weight based upon Dr. Castle's superior qualifications.[3] *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 8; Employer's Exhibits 1, 9. The administrative law judge also noted that Dr. Castle's opinion was supported by the opinions of Drs. Fino, Dahhan and Selby. Decision and Order at 8; Employer's Exhibits 6, 8. Inasmuch as it is supported by substantial evidence, the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed.

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are B readers while Drs. Spitz and Wiot are dually qualified as B readers and Board-certified radiologists. *Id.*

[3]Dr. Castle is Board-certified in Internal Medicine and Pulmonary Diseases. Employer's Exhibit 1. Dr. Forehand's qualifications are not found in the record.

In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, *supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge