

BRB No. 04-0797 BLR

JOHN E. BROCK)
)
 Claimant-Petitioner)
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 v.)
)
 SHAMROCK COAL COMPANY,)
 INCORPORATED)
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 and)
)
 JAMES RIVER COAL COMPANY) DATE ISSUED: 03/09/2005
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order-Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.) Pikeville, Kentucky, for employer

Barry H. Joyner (Howard Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order Denial of Benefits (2003-BLA-5934) of Administrative Law Judge Daniel J. Roketenetz 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). Director's Exhibit 2. The administrative law judge credited claimant with twenty-two years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on claimant's January 15, 2002 filing date. Addressing the merits of entitlement, the administrative law judge found that the medical evidence of record was insufficient to establish either the existence of pneumoconiosis or the presence of a totally disabling respiratory or pulmonary impairment due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.204(b), (c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's findings under Sections 718.202(a)(1) and 718.204(b)(2). In response, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter also urging the Board to affirm the denial of benefits as supported by substantial evidence.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable 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).

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; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After considering the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence and contains no reversible error. Claimant contends that the administrative law judge "selectively analyzed" the x-ray evidence, and "placed substantial weight on the numerical superiority of x-ray interpretations." Claimant's Brief at 3. Claimant has not provided any support for these assertions, and a review of the evidence and the administrative law judge's Decision and Order reveals that these contentions are without merit. The administrative law judge

found that the April 24, 2002 x-ray was interpreted as negative for the existence of pneumoconiosis by Drs. Hussain and Wiot. Decision and Order at 5 and Employer's Exhibit 3. The administrative law judge noted that Dr. Wiot is a Board-certified radiologist and B reader. The administrative law judge also found that the June 25, 2002 x-ray was interpreted as negative for pneumoconiosis by Dr. Halbert, a Board-certified radiologist and B reader. Decision and Order at 5; Director's Exhibits 11, 12; Employer's Exhibits 1, 6. Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge rationally found that because there are no positive x-ray readings of record claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). This finding is affirmed as it is supported by substantial evidence. *Id*; *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc*); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

We also affirm, as unchallenged, the administrative law judge's finding that claimant has not established the existence of pneumoconiosis under Section 718.202(a)(2)-(a)(4), as the record contains no biopsy evidence, the presumptions under Section 718.202(a)(3) are inapplicable in this case and none of the medical opinions diagnosed pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).¹ Because the administrative law judge properly found that the medical evidence of record is insufficient to establish the existence of pneumoconiosis at Section 718.202(a), we do not reach claimant's arguments under Section 718.204. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

¹ We also affirm, as unchallenged, the administrative law judge's finding that claimant established twenty-two years of coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, the administrative law judge's Decision and Order-Denial of Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge