BRB No. 04-0176 BLA

RAYMOND RIGGS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ADDINGTON, INCORPORATED	)	DATE ISSUED: 09/29/2004
	)	
and	)	
	)	
OHIO BUREAU OF WORKERS' COMPENSATION	)	
	)	
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 - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Raymond Riggs, Jackson, Ohio, *pro se*.

Gregory K. Johnson (Ohio Bureau of Workers' Compensation), Columbus, Ohio, for employer/carrier.

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

PER CURIAM:

Claimant,[1] without the assistance of counsel, appeals the Decision and Order -

[1] Claimant is Raymond Riggs, the miner, who filed his application for benefits on

Denying Benefits (03-BLA-5173) of Administrative Law Judge Joseph E. Kane 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 initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for eighteen years. Next, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were denied.

In response to claimant's appeal, employer urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[2]

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 Co.*, 12 BLR 1-176 (1989). 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the Decision and Order 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, and we therefore affirm it. Relevant to Section 718.202(a)(1), the administrative law judge correctly found that all three interpretations of the two x-ray films of record are negative for the existence of pneumoconiosis. Decision and Order at 8; Director's Exhibits 13, 14; Employer's Exhibit 1. The administrative law judge's determination that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis because all of the interpretations contained in the record were negative for the existence of pneumoconiosis, was rational and supported by substantial evidence. 20 C.F.R. §718.202(a)(1); *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Langerud v. Director, OWCP*, 9 BLR 1-101, 1-103 (1986); Decision and Order at 8. We, therefore, affirm the administrative law judge's finding at

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August 20, 2001. Director's Exhibit 1.

[2] We affirm the administrative law judge's determination regarding length of coal mine employment, which is not adverse to claimant, because this determination is unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3.

Section 718.202(a)(1).

Likewise, we affirm the administrative law judge's determination that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (a)(3). A review of the record reveals that there is no biopsy evidence, hence, claimant cannot establish the existence of pneumoconiosis under Section 718.202(a)(2). Similarly, a review of the record reveals that none of the presumptions referred to in Section 718.202(a)(3) is applicable to the case at bar inasmuch as the record is devoid of evidence establishing that claimant has complicated pneumoconiosis, *see* 20 C.F.R. §718.304, the instant claim was filed after January 1, 1982, *see* 20 C.F.R. §718.305, and this is a living miner's claim, *see* 20 C.F.R. §718.306. Consequently, we affirm the administrative law judge's findings under Section 718.202(a)(2) and (a)(3). 20 C.F.R. §§718.202(a)(2), (a)(3), 718.304 - 718.306; Decision and Order at 8.

Turning to the administrative law judge's consideration of the medical opinion evidence pursuant to Section 718.202(a)(4), a review of the record reveals that there are two physicians' opinions of record. In a report dated November 9, 2001, Dr. Gifford diagnosed coal workers' pneumoconiosis, chronic obstructive pulmonary disease, and a pulmonary nodule in the right lung. Director's Exhibit 9. In a report dated October 16, 2002, Dr. Zaldivar found evidence of a pulmonary impairment caused entirely by claimant's cigarette smoking history and opined that claimant does not have coal workers' pneumoconiosis or any dust related disease of the lungs. Employer's Exhibit 1. The administrative law judge found that the opinion of Dr. Gifford was not well reasoned and documented, and was therefore entitled to less weight. Specifically, the administrative law judge found that Dr. Gifford's diagnoses of pneumoconiosis and chronic obstructive pulmonary disease, based upon claimant's symptomotology, history, blood gas study, and pulmonary function study, lacked any explanation or discussion concerning how claimant's arterial blood gas and pulmonary function studies demonstrated the presence of pneumoconiosis, other than merely stating the actual test results. Hence, absent any additional basis beyond claimant's symptomotology and history, the administrative law judge rationally discounted Dr. Gifford's opinion that claimant had pneumoconiosis because it was insufficiently explained, and therefore, inadequately reasoned. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 9. The administrative law judge further properly found that the opinion of Dr. Zaldivar, that claimant did not have pneumoconiosis, was more persuasive and, therefore, entitled to dispositive weight because Dr. Zalidvar, who is Board-certified in internal medicine with a subspecialty in pulmonary diseases, not only examined claimant and conducted objective tests, but also reviewed the entire medical record submitted in this case. The administrative law judge permissibly determined that, consequently, Dr. Zaldivar rendered a well reasoned and well documented opinion because "[h]is findings take into consideration both the objective laboratory testing and the Claimant's pertinent medical,

social and occupational histories." *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997); Decision and Order at 9. Because the administrative law judge's credibility determinations are rational and supported by substantial evidence, we affirm his crediting of Dr. Zaldivar's opinion over the contrary opinion of Dr. Gifford pursuant to Section 718.202(a)(4). *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405, 1-407 (1985); *King v. Consolidation Coal Co.*, 8 BLR at 1-262; *Lucostic*, 8 BLR at 1-46; *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 1-147 n.2 (1984). We thus affirm the administrative law judge's finding that claimant failed to establish affirmatively the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

Based on the foregoing, we affirm the administrative law judge's determination that claimant failed to establish affirmatively the existence of pneumoconiosis pursuant to Section 718.202(a), as this finding is rational, contains no reversible error, and is supported by substantial evidence. Inasmuch as claimant has failed to satisfy his burden to establish the existence of pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits.[3] *See* 20 C.F.R. §718.202(a); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

[3] Claimant's failure to establish the existence of pneumoconiosis, a requisite element of entitlement, obviates the need for the Board to address the administrative law judge's determinations pursuant to 20 C.F.R. §718.204(b), (c). *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge