

BUDDY D. CHESSER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
WESTMORELAND COAL COMPANY)	
)	
Employer-Respondent)	DATE ISSUED:
)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Christine McKenna, Administrative Law Judge, United States Department of Labor.

Buddy D. Chesser, Duffield, Virginia, *pro se*.

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

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

PER CURIAM:

Claimant¹, without the assistance of counsel², appeals the Decision and Order

¹Claimant is Buddy D. Chesser, the miner, who filed a claim for benefits on August 9, 1994. Director's Exhibit 1.

²Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. See 20 C.F.R. §§802-211(e), 802.220; *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

(96-BLA-354) of Administrative Law Judge Christine McKenna 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). The administrative law judge noted that employer stipulated to twenty-two years of qualifying coal mine employment. Considering entitlement pursuant to 20 C.F.R. Part 718, the administrative law judge concluded that claimant failed to establish the existence of pneumoconiosis arising from his coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b) and total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on 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 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*. Additionally, all elements of entitlement must be established by a preponderance of the evidence. See *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 administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. In the instant claim, the administrative law judge properly found that the record contains no qualifying pulmonary function study or arterial blood gas study evidence and no evidence of cor pulmonale with right sided congestive heart failure.³ Decision and Order at 13-14; Director's

³A "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. A

Exhibits 12, 14, 25, 26. Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c)(1)-(3).

Pursuant to Section 718.204(c)(4), the administrative law judge considered the medical opinions of Drs. Paranthaman, Dahhan, Castle and Morgan, and properly found that none of these physicians opined that claimant has total respiratory disability. Decision and Order at 14; Director's Exhibits 13, 26; Employer's Exhibits 2, 3. Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c)(4). Because claimant has failed to establish total respiratory disability, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits.⁴ See *Anderson, supra*; *Perry, supra*.

"non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (2).

⁴Additionally, we note that the administrative law judge properly found that of the twenty-five interpretations of eleven x-rays of record, none were read positive for pneumoconiosis. The administrative law judge also properly found that there is no biopsy evidence in the record and claimant can not avail himself to any presumption enumerated in 20 C.F.R. §718.202(a)(3). Finally, the administrative law judge rationally concluded that the preponderance of the medical opinions of record were insufficient to establish the existence of pneumoconiosis. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Consequently, the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(4) are affirmed as supported by substantial evidence.

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

JAMES F. BROWN
Administrative Appeals Judge