BRB No. 90-2170 BLA

GORDON CARROLL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARKANSAS COALS, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-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 W. Ralph Musgrove, Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Stumbo, Caudill & Moak), Martin, Kentucky, for claimant.

Michael G. Hoffman (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and CLARKE, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (88-BLA-0137) of Administrative Law Judge W. Ralph Musgrove denying benefits on a

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

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 reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with thirteen years of qualifying coal mine employment as stipulated to by the parties and supported by the record. The administrative law judge found, however, that claimant had failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202. Accordingly, benefits were denied. Claimant appeals, challenging the administrative law judge's findings pursuant to Section 718.202(a)(4). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.[1]

[1] The administrative law judge's finding that the evidence of record failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) -

(a)(3), and his findings with regard to the length of coal mine employment, are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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 pursuant to 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

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 contains no reversible error. Claimant contends that, in evaluating the medical opinions of record pursuant to Section 718.202(a)(4), the administrative law judge failed to provide an adequate rationale for according greater weight to the medical opinions which found that claimant did not have pneumoconiosis, and less weight to the opinions which diagnosed pneumoconiosis. We disagree. The weight

to be assigned the evidence is the province of the administrative law judge. See Price v. Peabody Coal Co., 7 BLR 1-671 (1985). The administrative law judge accurately reviewed all of the medical opinions of record in chronological sequence, and properly considered the qualifications of the physicians as well as the documentation underlying their conclusions. The administrative law judge permissibly accorded greatest weight to the opinions of Drs. Dahhan and Broudy, who determined that claimant did not have pneumoconiosis, as these physicians possessed superior qualifications, and their findings were supported by the consultative expert opinions of Drs. Lane and Branscomb.[2] See Scott v. Mason Coal Co., 14 BLR 1-37 (1990)(en banc); Wetzel v. Director, OWCP, 8 BLR 1-139 (1985). The administrative law judge thus acted within his discretion in finding that the opinions of Drs. Wright, O'Neill, Cooper, Dahhan, and Brody, supported by the consultative opinions of Drs. Lane and Branscomb, were better reasoned and more persuasive than the opinions of the physicians who diagnosed pneumoconiosis. See Wetzel, supra; Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). The administrative law judge's findings are rational and based on substantial evidence, and we may not substitute our judgment. See Anderson, supra. We, therefore, affirm the administrative law judge's finding that claimant is not entitled to benefits.

[2] Drs. Dahhan, Broudy, Lane and Branscomb are all Board-certified internists and pulmonary disease specialists. See Director's Exhibits 21, 44; Employer's Exhibits 1, 3.

See Trent, supra.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

DAVID A. CLARKE, JR.
Administrative Law Judge