

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-1426**

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THOMAS ARNETTE,

Petitioner,

versus

CROCKETT AND VIRGINIA COAL COMPANY; DIRECTOR,  
OFFICE OF WORKERS' COMPENSATION PROGRAMS,  
UNITED STATES DEPARTMENT OF LABOR; GRACECO  
ENERGY, INCORPORATED; ROBERTS ENTERPRISES;  
SHIRL COAL, INCORPORATED; WESTMORELAND COAL  
COMPANY, INCORPORATED,

Respondents.

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On Petition for Review of an Order of the Benefits Review Board.  
(95-1284, 96-0956-BLA)

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Submitted: September 11, 1997      Decided: September 18, 1997

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Before RUSSELL, MURNAGHAN, and HAMILTON, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Thomas Arnette, Petitioner Pro Se. S. Parker Boggs, BUTTERMORE,  
TURNER & BOGGS, P.S.C., Harlan, Kentucky; Patricia M. Nece, Jill M.  
Otte, Rodger Pitcairn, UNITED STATES DEPARTMENT OF LABOR, Washing-  
ton, D.C.; Douglas Allan Smoot, JACKSON & KELLY, Charleston, West  
Virginia, for Respondents.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Appellant seeks review of the Benefits Review Board's decision and order affirming the administrative law judge's denial of black lung benefits pursuant to 30 U.S.C.A. §§ 901-945 (West 1986 & Supp. 1996). Our review of the record discloses that the Board's decision is based upon substantial evidence and is without reversible error. Accordingly, we affirm on the reasoning of the Board.\* Arnette v. Crockett & Virginia Coal Co., Nos. 95-1284; 96-0956-BLA (B.R.B. Jan. 29, 1997). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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\* We decline to address Arnette's contention that he was denied an examination by a physician of his choice, as the argument is raised initially on appeal. See South Carolina v. United States Dep't of Labor, 795 F.2d 375, 378 (4th Cir. 1986).