

BRB Nos. 97-0894 BLA
and 97-0894 BLA-A

LEON ST. CLAIR)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
WINSTON MINING COMPANY)	DATE ISSUED:
)	
Employer-Respondent)	
Cross-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Mollie W. Neal,
Administrative Law Judge, United States Department of Labor.

Leon St. Clair, Maxie, Virginia, *pro se*.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for
employer.

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

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order (96-
BLA-0356) of Administrative Law Judge Mollie W. Neal 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 found

¹ Tim White, a benefits counselor with Stone Mountain Health Services of Vansant,
Virginia, requested, on behalf of claimant, that the Board review the administrative law
judge's decision, but Mr. White is not representing claimant on appeal. *See Shelton v.*
Claude V. Keen Trucking Co., 19 BLR 1-88 (1995)(Order).

more than twenty-five years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.² The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer cross-appeals, contending that the administrative law judge erred in finding employer was the responsible operator. The Director, Office of Workers' Compensation Programs responds, urging affirmance of the denial of benefits.

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 Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 are in accordance with law. 33 U.S.C. §921(b)(3), as incorporated 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 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. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *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 Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge, in the instant case, rationally determined that the evidence or record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1) as all of the x-rays of record were read as negative for pneumoconiosis. Director's Exhibits 14-16; Employer's Exhibits 1, 3, 5; Decision and Order at 6; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). Further, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2) and (3) as there is no autopsy or biopsy evidence of record, this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. See 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

² Claimant filed his claim for benefits on September 8, 1994. Director's Exhibit 1.

With respect to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly found the evidence insufficient to establish the existence of pneumoconiosis. *Piccin, supra*. As the administrative law judge properly noted, none of the physicians of record diagnosed pneumoconiosis or a respiratory impairment due to coal dust exposure. Director's Exhibits 12, 29, 31; Employer's Exhibit 7; Decision and Order at 7; *Perry, supra*. The administrative law judge is empowered to weigh the medical opinion evidence of record and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded. *Trent, supra*; *Perry, supra*. Moreover, we need not address employer's argument on cross-appeal challenging the administrative law judge's finding that it is the properly designated responsible operator since we affirm the denial of benefits and thus this case no longer presents any real case or controversy for adjudication. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990).

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

REGINA C. McGRANERY
Administrative Appeals Judge