BRB No. 01-0654 BLA

JIMMY ELDRIDGE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ELDRIDGE COAL COMPANY	)	DATE ISSUED:
PARKER BRANCH COAL COMPANY	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	
	)	
Employers/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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Jimmy Eldridge, Closplint, Kentucky, *pro se*.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (00-BLA-98) of Administrative Law Judge Donald W. Mosser rendered on a duplicate 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).[1] The administrative law judge found sixteen

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. Theses regulations became effective

and one-quarter years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.[2] Decision and Order at 5. In considering this duplicate claim, the administrative law judge concluded that the newly submitted evidence of record was insufficient to establish total disability due to pneumoconiosis, the element of entitlement previously adjudicated against claimant, and thus, found that a material change in conditions was not established pursuant to *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). Further, the administrative law judge found that, even if a material change in conditions were established, benefits could not be awarded on this claim as the existence of pneumoconiosis was not established on the merits. Benefits were, accordingly, denied.

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on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, inter alia, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Association v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001). The court=s decision renders moot those arguments made by the Director, Office of Workers= Compensation Programs, regarding the impact of the challenged regulations.

[2] Claimant filed his first claim for benefits on June 26, 1991. Director=s Exhibit 45 (121-123). This claim was denied on December 10, 1991 because claimant failed to show that he was totally disabled due to pneumoconiosis. Director=s Exhibit 45 (1). Claimant did not appeal that denial.

On appeal, claimant generally contends that he is entitled to benefits. Employer has not filed a response brief in this appeal.[3] The Director, Office of Workers= Compensation Programs, contends that the revised regulations will not affect the outcome of this case and further states he will not participate in this appeal on the merits.

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 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).

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)(*en banc*).

After consideration of the administrative law judge=s Decision and Order and the evidence of record, we conclude that the Decision and Order of administrative law is supported by substantial evidence and contains no reversible error. The administrative law judge rationally found that the evidence of record was insufficient to establish total disability pursuant to 20 C.F.R. '718.204(c)(1)-(4)(2000), now numbered 20 C.F.R. '718.204(b)(2)(i)-(iv). *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge properly found the evidence insufficient to establish total disability pursuant to Section 718.204(c)(1)-(c)(3)(2000) as the three pulmonary function studies and three blood gas studies of record produced non-qualifying values,[4] and there was no evidence of cor pulmonale with right-sided congestive heart failure in the record. 20 C.F.R. '718.204(b)(2)(i)-(iii); Director=s Exhibits 12, 36, 54; Decision and Order at 11;

[3] By Order dated September 24, 2001, Jericol Mining, Incorporated was dismissed as a party to this claim.

[4] A Aqualifying@ 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, Appendix B, C respectively. A Anon-qualifying@ exceeds those values. *See* 20 C.F.R. '718.204(b)(2)(i), (ii).

Schetroma v. Director, OWCP, 18 BLR 1-19 (1993); *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989), *rev=d on other grounds*, 933 F.2d 510, 15 BLR 2-124 (7th Cir. 1991). Turning to the medical opinion evidence, the administrative law judge permissibly accorded determinative weight to the opinions of Drs. Dahhan and Broudy, finding that claimant retained the respiratory capacity to perform his previous coal mine employment, because they were consistent with the objective evidence of record and based on the credentials of Drs. Dahhan and Broudy. Director=s Exhibits 12, 36, 50, 54; Decision and Order at 11-12; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Further, the administrative law judge permissibly accorded them determinative weight as they were supported by the review of the evidence conducted by Dr. Branscomb, who was also highly qualified. *Clark*, *supra*; *Dillon*, *supra*. The administrative law judge properly found that the hospital treatment records and the opinions of Drs. Robinson, Miller and Dalloul did not address the issue of total disability, and accorded less weight to Dr. Baker=s diagnosis of moderate impairment because Dr. Baker did not address the effects of heart disease on claimant=s impairment. Director=s Exhibits 9-13, 36, 38, 50, 52, 54, 55; Decision and Order at 11; *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) and 13 BLR 1-46 (1986), *aff=d on recon*. 9 BLR 1-104 (1986)(*en banc*); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Gee W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985); *see Jewell Smokeless Coal Corp. v. Street*, 42 F.3d 241, 19 BLR 2-1 (4th Cir. 1994). The administrative law judge, therefore, properly found that total disability was not established at 20 C.F.R. '718.204(c)(4)(2000). 20 C.F.R. '718.204(b)(2)(iv).

The administrative law judge is empowered to weigh the medical evidence 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 if the administrative law judge=s findings are supported by substantial evidence. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We, therefore, affirm the administrative law judge=s finding that the evidence failed to establish total disability and, therefore, a material change in conditions.[5] 20 C.F.R. ''718.204(b)(2)(i)-(iv); 725.309(d)(2000); *Ross*, *supra*.

Accordingly, the administrative law judge=s Decision and Order Denying Benefits is affirmed.

[5] Because we affirm the administrative law judge=s finding that a material change in conditions was not established, *i.e.*, total disability, we need not consider his finding on the merits regarding the existence of pneumoconiosis. *See Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*).

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge