BRB No. 01-0684 BLA

NOAH W. BOWMAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
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 Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Noah W. Bowman, Abingdon, Virginia, *pro se*.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (00-BLA-0799) of Administrative Law Judge Mollie W. Neal rendered 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).[1] The administrative law judge found more than sixteen years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 13. The administrative law judge

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

concluded that, although the evidence of record was sufficient to establish a totally disabling respiratory impairment, it was insufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis. Benefits were, accordingly, denied.

On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers= Compensation Programs, has filed a letter indicating that he will not participate in this 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. *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. The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge properly found that the x-ray evidence of record was insufficient to establish the existence of pneumoconiosis based on the preponderance of negative readings by physicians with superior qualifications. Director=s Exhibits 15-18, 31-33, 36, 38, 39; Employer=s Exhibits 1-4; Decision and Order at 12; 20 C.F.R. '718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *see Staton v. Norfolk v. Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). In addition, 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 was no biopsy evidence of record, this was a living miner=s claim filed after January 1, 1982, and there was no evidence of complicated pneumoconiosis in the record. Decision and Order at 12; *see* 20 C.F.R. ''718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Considering the medical opinion evidence of record, the administrative law judge properly accorded greater weight to the opinions of Drs. McSharry and Castle, finding no evidence of coal worker=s pneumoconiosis or any disease significantly worsened by exposure to coal dust, than to the contrary opinion of Dr. Robinette, as they were better reasoned and better supported by the objective evidence. Director=s Exhibits 13, 25, 31, 33; Employer=s Exhibits 5, 6; Decision and Order at 13; *Clark, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *see Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996). We, therefore, affirm the administrative law judge=s finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a).[2] 20 C.F.R. ''718.201, 718.202(a)(1)-(4).

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. *See Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge=s finding that claimant failed to establish the existence of pneumoconiosis as it is supported by substantial evidence and is in accordance with law.

[2] Because we affirm the administrative law judge=s finding that the existence of pneumoconiosis was not established, we need not address the administrative law judge=s finding regarding causation. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge