BRB No. 01-0722 BLA

SAMUEL A. NICOLA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Michelle A. Jones (Krasno, Krasno & Quinn), Northville, Pennsylvania, for claimant.

Jeffrey S. Goldberg (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-1029) of Administrative Law Judge Paul H. Teitler 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).[1] In this request for modification of the denial of a duplicate claim, the

[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, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

administrative law judge credited claimant with six and one-half years of coal mine employment, then considered the newly submitted evidence and found it insufficient to establish either the existence of pneumoconiosis arising out of coal mine employment or total disability[2] and, thus, insufficient to establish a material change in conditions. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that claimant failed to establish at least ten years of coal mine employment, the existence of pneumoconiosis arising out of coal mine employment, and total disability due to pneumoconiosis. Claimant also contends that the new regulations will not affect the outcome of this case. The Director, Office of Workers' Compensation Programs (the Director) responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence.

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 in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove 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 one 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*).

[2] This is claimant's third claim for benefits. Claimant failed to establish any element of entitlement in the prior claims. Director's Exhibits 1, 25.

Claimant argues that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis.[3] Specifically, claimant asserts that the x-ray findings of increased interstitial changes with pleural thickening by Drs. Navani and Buendia constitute substantial evidence to establish the existence of pneumoconiosis. Director's Exhibits 28, 30. We disagree.

The administrative law judge found that the x-ray readings were all negative for the existence of pneumoconiosis. The administrative law judge further found that notations of "interstitial markings...on chest x-ray, with no categorization of pneumoconiosis," were insufficient to establish the presence of pneumoconiosis. Decision and Order at 6. This was proper. 20 C.F.R. §§718.102(b), 718.202(a); *Trent, supra*. Accordingly, as none of the x-ray interpretations of record were classified as positive, the administrative law judge properly found that claimant could not establish the existence of pneumoconiosis as a matter of law. *Id*.

Claimant next argues that the administrative law judge erred in according little weight to Dr. Kraynak's diagnosis of pneumoconiosis. We disagree. Contrary to claimant's argument, the administrative law judge properly found that Dr. Kraynak's opinion was not well documented and reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Claimant further argues that Dr. Green's statement, that the interstitial lung markings were "not inconsistent" with pneumoconiosis, supports a finding of pneumoconiosis. Director's Exhibit 32. We disagree. Dr. Green's November 2000 opinion was based on Dr Buendia's x-ray reading, which was reread as negative by Dr. Navani, a dually qualified reader. *Id*. Since Dr. Green's opinion was based on an x-ray reading, it is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Moreover, the administrative law judge's finding that Dr. Green's 1999 report was entitled to greater weight because it was based on a more complete consideration of the record is reasonable. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark, supra*; *Stark, supra*. We, therefore, affirm the administrative law judge's finding that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(4).

Claimant next argues that the administrative law judge erred in finding that the medical opinion evidence was insufficient to establish total disability. We disagree. The

[3] Claimant has not challenged the administrative law judge's findings that the existence of pneumoconiosis was not established at Section 718.202(a)(2) and (3). These findings are, therefore, affirmed. 20 C.F.R. §718.202(a)(2), (3); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

administrative law judge concluded that Dr. Kraynak's opinion was outweighed by the opinion of Dr. Green, which he found better reasoned and documented because it was supported by the consistently non-qualifying test results of record. This was rational. *Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *see Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987);

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). Thus, we affirm the administrative law judge's finding that the evidence failed to establish either the existence of pneumoconiosis or total disability, and, therefore, his finding that a material change in conditions was not established.[4] Thus, the administrative law judge's denial of claimant's request for modification is affirmed. *See Hess v. Director, OWCP*, 7 BLR 1-141 (1998).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH

[4] Because we affirm the administrative law judge's findings that the existence of pneumoconiosis and total disability have not been established, we need not address claimant's arguments with respect to the findings at 20 C.F.R. §718.203(b) and years of coal mine employment. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge