

BRB No. 01-0154 BLA

DELLA CAIN)		
(Widow of LUTHER CAIN))		
)		
Claimant-Petitioner)		
)		
v.)		
)		
DIRECTOR, OFFICE OF WORKERS')	DATE	ISSUED:
COMPENSATION PROGRAMS, UNITED)		
STATES DEPARTMENT OF LABOR)		
)		
Respondent)	DECISION and ORDER	

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Harold Rader, Manchester, Kentucky, for claimant.

Jeffrey S. Goldberg (Howard M. Radzely, Acting 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 the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (99 -BLA-1264) of Administrative Law Judge Robert L. Hillyard 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). In the previous decision in this case, Administrative Law Judge Donald W.

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

Mosser found that the miner established the existence of pneumoconiosis arising out of coal mine employment, but denied benefits because he found that the miner failed to establish the existence of a totally disabling respiratory impairment. Pursuant to the miner's motion for modification, Judge Hillyard (the administrative law judge) found that eleven years of coal mine employment were established and that the existence of pneumoconiosis arising out of coal mine employment had been established in the prior claim. The administrative law judge further found the newly submitted medical evidence sufficient to establish total disability, and therefore, a basis for modification, but insufficient to establish that the total disability was due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to credit the opinion of Dr. Zaveri on the issue of disability causation. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits 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 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*).

Claimant contends that the administrative law judge erred in rejecting Dr. Zaveri's opinion on disability causation. We disagree. The administrative law judge permissibly

C.F.R. Parts 718, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The miner died on August 17, 1999, while his claim was pending. His widow, Della Cain, has been substituted as claimant.

³ We affirm the findings of the administrative law judge on the length of coal mine employment, and at 20 C.F.R. §718.204(c)(1) and (3)(2000), as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

⁴ Claimant also argues that the administrative law judge erred in finding that the

accorded little weight to the opinion of Dr. Zaveri because he offered no basis for his conclusion that the miner's disability was related to the miner's pneumoconiosis. Decision and Order at 5, 8; Director's Exhibits 42, 44, 51; *Tennessee Consolidation Coal Co. v. Crisp*, 866 F.2d 179, 12 BLR 2-121 (6th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Gilliam v. G & O Coal Co.*, 7 BLR 1-59 (1984). Contrary to claimant's argument, the administrative law judge also properly found that the hospice records covering the miner's treatment for terminal bladder cancer did not provide reasoned support for Dr. Zaveri's conclusion that the miner's pneumoconiosis contributed to his totally disabling respiratory impairment. *Id.*; Director's Exhibit 51.

An administrative law judge must examine the validity of a medical opinion and the underlying evidence upon which the conclusion is based, and is not required to accord greater weight to the opinion of a treating physician. See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Clark, supra*. 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, as the administrative law judge's determination regarding Dr. Zaveri's opinion is supported by the record, we must affirm the administrative law judge's finding on disability causation.

qualifying blood gas study did not establish total disability. However, inasmuch as the administrative law judge found total disability established, any error therein would be harmless. See 20 C.F.R. §718.204(b)(2)(ii); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge