BRB No. 98-0152 BLA

ALFRED M. COOK	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Richard A. Dean (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (96-BLA-0482) of Administrative Law Judge Mollie W. Neal awarding 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 that claimant[1] established twenty-two years and one month of qualifying coal mine employment and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b) and 718.204(b), (c)(4). Accordingly, benefits were awarded. On appeal, employer contends that the administrative

[1] Claimant is Alfred M. Cook, the miner, who filed a claim for benefits on October 4, 1994. Director's Exhibit 1.

law judge erred in finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(1), in failing to weigh the contrary probative evidence pursuant to Section 718.204(c), and in weighing the medical opinion evidence pursuant to Section 718.204(b), (c)(4). Claimant responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate in this appeal.

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 into the Act 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 pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. *See Anderson, supra*; *Baumgartner, supra*; *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 administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. Employer initially contends that the administrative law judge erred in weighing the x-ray evidence pursuant to Section 718.202(a)(1). Employer's Brief at 11-13. The record contains twenty-four interpretations of six x-rays, fourteen of which are positive for the existence of pneumoconiosis. Director's Exhibits 16-18, 31-34; Claimant's Exhibits 1, 2; Employer's Exhibits 1, 3, 4. Eight of the fourteen positive x-rays are by physicians who are both B-readers and board-certified radiologists, while only three of the ten negative readings are by physicians who have both qualifications. Director's Exhibits 16, 32, 34; Claimant's Exhibits 1, 2; Employer's Exhibit 3. The administrative law judge rationally concluded that the preponderance of the interpretations by physicians with dual qualifications is positive for the existence of pneumoconiosis. Decision and Order at 7; *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Parulis v. Director, OWCP*, 15 BLR 1-28 (1991); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Perry, supra; Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Employer next contends that the administrative law judge failed to weigh the contrary probative evidence pursuant to Section 718.204(c). Employer's Brief at 13-16. This contention of error is without merit, however, as the administrative law judge acted within her discretion in weighing all of the contrary evidence, including the non-qualifying pulmonary function and arterial blood gas studies, in finding the evidence sufficient to establish the existence of a totally disabling respiratory impairment pursuant to Section 718.204(c). Decision and Order at 8-12; *Lafferty, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.* 9 BLR 1-236 (1987). Further, the administrative law judge acted within her discretion in finding that the opinions of Drs. Rasmussen and Forehand, that the miner has total respiratory disability, is consistent with the objective medical evidence of record, some of which yielded results which are qualifying pursuant to Section 718.204(c)(1), (2). Decision and Order at 11; *Lafferty, supra*; *Fields, supra; Shedlock, supra.* Thus, we affirm the administrative law judge's findings pursuant to Section 718.204(c).

Employer finally contends that the administrative law judge did not advance an appropriate rationale for crediting the medical opinion of Dr. Rasmussen over the opinions of Drs. Zaldivar and Renn. Employer's Brief at 16-18. Upon considering the medical opinion evidence of record, the administrative law judge acted within his discretion in finding Dr. Rasmussen's opinion to be the most persuasive because he is claimant's treating physician and because his opinion is well reasoned and consistent with the objective medical evidence of record. Decision and Order at 12; Director's Exhibit 14; Claimant's Exhibit 4; *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Lafferty, supra; Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge is empowered to weigh the evidence and to draw her 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, supra*. Thus, we affirm the administrative law judge's finding that claimant established total disability due to pneumoconiosis pursuant to Sections 718.202(a)(1), 718.203(b), 718.204(b), (c)(4), and the award of benefits, as they are supported by substantial evidence and in accordance with law.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge