BRB No. 97-1059 BLA

JEWELL M. JOHNSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CSX CORPORATION	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Respondent	)	DECISION and ORDER

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

Jewell M. Johnson, Murray, Kentucky, *pro se.*

Rodney L. Baker (Huddleston, Bolen, Beatty, Porter & Copen), Huntington, West Virginia, for employer.

Jill M. Otte (Marvin Krislov, Deputy Solicitor for National Operations; 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, the United States Department of Labor.

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

PER CURIAM:
Claimant,[1] without the assistance of counsel, appeals the Decision and Order

[1] Claimant is the miner, Jewell M. Johnson, who initially filed for benefits on October 31, 1983, which application was denied on February 27, 1984. Director's

(95-BLA-706) of Administrative Law Judge Donald W. Mosser 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). The administrative law judge initially found that claimant established six months of coal mine employment, and that the evidence of record was sufficient to establish the existence of pneumoconiosis and a totally disabiling respiratory impairment, which established a material change in condition pursuant to 20 C.F.R. §725.309. 20 C.F.R. §§718.202(a)(2), 718.204(c). The administrative law judge further found however, that the evidence was insufficient to establish the cause of claimant's pneumoconiosis, or that his total disability was due to pneumoconiosis. 20 C.F.R. §§718.203, 718.204(b). Accordingly, benefits were 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, also responds contending that substantial evidence supports the denial of benefits.[2]

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). If the findings of fact and conclusions of law of the administrative law judge 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

Exhibit 21. Claimant filed the present duplicate claim for benefits on April 22, 1994. Director's Exhibit 1.

[2] We affirm the administrative law judge's findings that claimant has established the existence of pneumoconiosis and a totally disabling respiratory impairment, thereby establishing a material change in condition, as they are supported by substantial evidence, favorable to claimant and are unchallenged on appeal. 20 C.F.R. §§718.202(a), 718.204(c), 725.309; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).

To be entitled to benefits under Part 718, claimant must establish total respiratory disability due to pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to prove any one of these elements precludes entitlement.

After consideration of the administrative law judge's Decision and Order, employer's and the Director's response briefs, and the evidence of record, we conclude that the Decision and Order denying benefits is supported by substantial evidence and contains no reversible error therein. Initially, the administrative law judge rationally found that claimant established only six months of qualifying coal mine employment. The record indicates that claimant worked as an underground miner for approximately six months, and then worked for employer for approximately thirty years, first as a fireman loading coal into the engines of steam trains, and later as an engineer, which position he maintained until his retirement in 1976. This position involved picking up coal at locations in Detroit, Michigan, and delivering it to consumers for use as heating fuel. Claimant testified that none of his work took place in a coal mine, and that the coal was not being transported between mine sites. Hearing Transcript at 16-19. Since the record supports the administrative law judge's finding that none of claimant's work with employer occurred in or around a coal mine, and involved already fully prepared coal being used by, or delivered to, its ultimate consumers, we affirm this finding as supported by substantial evidence. *Director OWCP v. Consolidated Coal Co.*, 884 F.2d 926, 13 BLR 2-38 (6th Cir. 1989); *Southard v. Director, OWCP*, 732 F.2d 66, 6 BLR 2-26 (6th Cir. 1984); *see also Ray v. Williamson Shaft Contracting Co.*, 14 BLR 1-105 (1990); *Whisman v. Director, OWCP*, 8 BLR 1-96 (1985).

Pursuant to Section 718.204(b), the administrative law judge permissibly found the medical opinion evidence insufficient to establish that the miner's totally disabling respiratory impairment was due to pneumoconiosis. The administrative law judge considered the medical reports submitted with the present claim, which consists of the opinions of Drs. Conrad, Broudy and Traughber, and rationally determined that they were unable to satisfy claimant's burden of proof. Specifically, the administrative law judge properly found that Dr. Conrad failed to express an opinion regarding this issue, and that Dr. Broudy had diagnosed a disabling respiratory impairment due to smoking, but found no occupationally acquired lung condition. Thus, these reports do not support claimant's burden of proof. The administrative law judge also rationally rejected Dr. Traughber's diagnosis of

pneumoconiosis "possibly" due to coal mine employment, which resulted in a moderate ventilatory defect which he "suspected" was due to pneumoconiosis, as too equivocal to be considered a definite diagnosis, and also due to this physician's failure to discuss the effect of claimant's lengthy smoking history.[3] Decision and Order at 8-12; Director's Exhibits 9, 11, 16. Since the administrative law judge has provided rational reasons for his rejection of the only evidence supportive of claimant's position, we affirm the Section 718.204(b) finding. *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986).

The administrative law judge is empowered to weigh the medical evidence and 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 inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's findings pursuant to Section 718.204(b), as they are supported by substantial evidence and are in accordance with law. Moreover, since claimant has failed to establish a required element of proof under Part 718, we affirm the denial of benefits. *See Trent, supra; Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

[3] We note that the administrative law judge did not specifically address Dr. Traughber's original 1984 report. This omission does not require a remand however, since this opinion does not include a diagnosis regarding the cause of claimant's respiratory impairment and cannot satisfy claimant's burden of proof on this issue. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge