BRB No. 00-0143 BLA

BERNARD SOKOLOSKI	)	
	)	
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 Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for claimant.

Jennifer U. Toth (Henry L. Solano, 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, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-613) of Administrative Law Judge Ainsworth H. Brown denying benefits on a duplicate 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). Claimant filed his first claim on October 24, 1975. Director's Exhibit 13. After a hearing on the merits, Administrative Law Judge George A. Fath issued a Decision and Order on November 22, 1985, in which he credited claimant with three and one-quarter years of coal mine employment, and found the existence of pneumoconiosis and total disability established. Judge Fath denied benefits, however, because he found that claimant failed to establish that pneumoconiosis arose out of coal mine employment or that

total disability was due to pneumoconiosis. Director's Exhibit 18. Claimant took no further action on this claim. On February 12, 1991, claimant filed a second claim. Pursuant to the hearing on this claim, Administrative Law Judge Robert D. Kaplan accepted the stipulation of the parties to 3.25 years of coal mine employment and the stipulation of the Director, Office of Workers' Compensation Programs (the Director) as to the existence of pneumoconiosis and found the evidence sufficient to establish that pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Judge Kaplan, therefore, concluded that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309. Turning to the merits, Judge Kaplan found the evidence of record insufficient to establish total disability or causation. *See* 20 C.F.R. §718.204(c), (b). Benefits were therefore denied. Director's Exhibit 19. The Board affirmed the denial of benefits. *Sokoloski v. Director, OWCP*, BRB No. 94-0931 BLA (May 30, 1995). Claimant took no further action until he filed the present claim on August 28, 1997. In considering this duplicate claim, Administrative Law Judge Ainsworth H. Brown (the administrative law judge) found that claimant failed to establish a material change in conditions because he failed to establish either a totally disabling respiratory impairment or causation. 20 C.F.R. §§725.309(d); 718.204(c), (b). Benefits were therefore denied. Claimant appeals, arguing that the evidence establishes a material change in conditions pursuant 20 C.F.R. §725.309(d), as well as a totally disabling respiratory impairment which was due to pneumoconiosis at 20 C.F.R. §718.204(c), (b), and that, in any case, claimant is entitled to a presumption of causation based on x-ray evidence of complicated pneumoconiosis. Claimant also contends that the date of entitlement should be either June 1, 1995, the first month after the denial by the Benefits Review Board or August 1, 1997 the month the duplicate claim was filed. 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*).

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 Decision and

Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Considering Judge Kaplan's prior Decision and Order and the newly submitted evidence, the administrative law judge properly found that claimant failed to establish causation.

The administrative law judge specifically noted that when Dr. Mendiratta was presented with an established exposure of only 3.25 years of coal mine employment (as opposed to the fifteen to twenty years claimant had expressed to him), Dr. Mendiratta "was unable to render an opinion on the question of causation." Decision and Order at 2, *see* Director's Exhibit 33. The administrative law judge also noted that Dr. Mendiratta admitted that "he could not be sure,...[with] the coal dust exposure of 3.25 years that coal workers' pneumoconiosis was a causative factor[,]...and that [e]lsewhere in his testimony Dr. Mendiratta had agreed that [claimant's] subjective complaints were non specific for coal workers' pneumoconiosis." Decision and Order at 2; *see* Director's Exhibit 33. The administrative law judge, therefore, rationally concluded in light of Dr. Mendiratta's opinion and the prior Decision and Orders that claimant failed to establish causation. *See 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); *Long v. Director, OWCP*, 7 BLR 1-254 (1984). Likewise, because the administrative law judge permissibly found that claimant failed to establish the existence of complicated pneumoconiosis by a preponderance of the evidence, Director's Exhibits 8, 9, 10, 11; *see Melnick v. Consolidation Coal Company*, 16 BLR 1-31 (1991)(*en banc*), claimant is not entitled to a presumption of causation. *See* 20 C.F.R. §718.304.

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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, as the administrative law judge properly found that claimant failed to establish causation, an essential element of entitlement, we need not address his other arguments. *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

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge