

BRB No. 00-0365 BLA

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

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

Edmond Collett, Hyden, Kentucky, for claimant.

Rita Roppolo (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: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-0697) 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 credited claimant with two years and two months of qualifying coal mine employment, and found that claimant failed to establish the existence of totally disabling pneumoconiosis pursuant to 20 C.F.R. Part 718. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in his consideration of the medical evidence pursuant to 20

C.F.R. §§718.202(a) and 718.204(c). The Director, Office of Workers' Compensation Programs (the Director) responds, urging affirmance of the administrative law judge's findings.

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 establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out 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).

Claimant first contends that the administrative law judge erred in his consideration of the evidence regarding the length of claimant's coal mine employment. Claimant contends that on the basis of information he supplied on his application for benefits, he has established that he worked fourteen years in the coal mine industry. In discussing the years of claimant's coal mine employment, the administrative law judge found that the majority of claimant's testimony at the hearing regarding the length of his coal mine employment involved employers who were listed on the social security records, which establish two years and two months of coal mine employment. Decision and Order at 4. The administrative law judge also found that claimant submitted check stubs and W-2 forms to establish additional years of coal mine employment. The administrative law judge found that a check stub from Old Garry Coal was not credible as the stub contained no specific information such as an employee name or a wage amount. The administrative law judge also found that a check stub dated February 20, 1974 was not credible as it did not contain the employer's name. With respect to several other illegible check stubs, the administrative law judge determined that the earnings reported on those stubs were consistent with social security earning statements for the time period listed. Contrary to claimant's contention, the administrative law judge rationally relied upon the social security earnings record to determine that claimant only established two years and two months of coal mine employment. See *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986);

Claimant does not challenge the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(2), (3) or 718.204(c)(1) - (3). These findings are therefore affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Smith v. National Mines Corp., 7 BLR 1-803 (1985); *Miller v. Director, OWCP*, 7 BLR 1-693 (1983); *Maggard v. Director, OWCP*, 6 BLR 1-285 (1983). As claimant supplied no further credible evidence to support his claim of fourteen years of coal mine employment, we affirm the administrative law judge's findings regarding the length of coal mine employment. See *Kephart v. Director, OWCP*, 8 BLR 1-185 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709 (1985); *Shelesky v. Director, OWCP*, 7 BLR 1-34 (1984).

Claimant next contends that the administrative law judge erred in relying upon the numerical superiority of the negative x-ray interpretations and the superior qualifications of the physicians making those interpretations to determine that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant further contends, without explanation, that the administrative law judge may have "selectively analyzed" the x-ray evidence. Claimant's Brief at 5. Claimant's contentions are without merit. The administrative law judge found that the record contained three interpretations of one x-ray, dated April 10, 1997. Decision and Order at 5; Director's Exhibit 9. Of the three interpretations, only Dr. Baker, a B-reader, found that the x-ray established the presence of pneumoconiosis. Drs. Sargent and Barrett, both board-certified radiologists and B-readers, on the other hand, did not find the existence of pneumoconiosis. Contrary to claimant's contention, the administrative law judge permissibly relied on the x-ray interpretations by better qualified physicians. See *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). We therefore reject claimant's contentions and affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

Claimant also contends that the administrative law judge erred in his consideration of Dr. Baker's opinion at Section 718.202(a)(4). Claimant asserts that contrary to the administrative law judge's determination, Dr. Baker's finding of eighteen years of coal

As the Director notes in his reply brief, claimant's application itself is inconsistent in that the application initially noted fourteen years of coal mine employment, but was then modified on October 22, 1998 to reflect only eight years of coal mine employment. Director's Exhibit 1. Similarly, claimant's employment history form notes employment from 1974 to 1988, but an additional page included with the form, in claimant's writing, only notes employment from 1974 to 1983. Director's Exhibit 2.

Dr. Baker opined that claimant suffers from pneumoconiosis, bronchitis and chronic obstructive pulmonary disease due to coal dust exposure and cigarette smoking, and ischemic heart disease due to arteriosclerotic heart disease. Dr. Baker determined that claimant has a mild respiratory impairment which is due to coal workers' pneumoconiosis and bronchitis. Director's Exhibit 9.

mine employment does not necessitate a rejection of his medical opinion. This contention is without merit. The administrative law judge rationally found that the disparity between the eighteen year history of coal mine employment considered by Dr. Baker and the history of two years and two months established by the evidence is sufficient to undermine the credibility of Dr. Baker's opinion. *See Barnes v. Director, OWCP*, 19 BLR 1-71 (1995) (*en banc* reconsideration)(Smith, J., dissenting), *affirming in part and vacating in part* 18 BLR 1-55 (1994); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Hall v. Director, OWCP*, 8 BLR 1-193(1985). We therefore affirm the administrative law judge's decision to accord no weight to Dr. Baker's opinion at Section 718.202(a)(4).

Lastly, at Section 718.204(c)(4), claimant contends that the administrative law judge erred in determining that Dr. Baker's opinion is insufficient to establish total disability. Claimant contends that the administrative law judge should have considered the exertional requirements of claimant's usual coal mine employment with claimant's physical limitations. Furthermore, claimant contends that his age, education and work experience should have been considered in determining whether he is totally disabled. We reject these contentions. As the Director notes in his reply brief, Dr. Baker did not provide any physical limitations associated with claimant's mild impairment, and in fact, indicated that claimant retains the respiratory capacity to perform the work of a coal miner. Director's Exhibit 9. Moreover, with respect to claimant's contention that his age, education and work experience should have been considered, the Board has held that non-respiratory and non-pulmonary impairments have no bearing on establishing total disability under Part 718. *See Beatty v. Danri Corp.*, 16 BLR 1-11, 1-15 (1991). Thus, we affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c)(4). 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 of Utah, Inc.*, 12 BLR 1-111 (1989). Inasmuch as the administrative law judge properly considered the evidence regarding the years of coal mine employment and pursuant to Sections 718.202(a)(1), (4) and 718.204(c)(4), we affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge