BRB No. 98-0480 BLA

DENNIS CORNETT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BENHAM COAL, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
KENTUCKY PRODUCERS' SELF-INSURANCE FUND	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Dennis Cornett, Gilley, Kentucky, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (96-BLA-1616) 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). The administrative law judge found twenty-three and one-half years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] Decision and Order at 4. The

[1] Claimant filed his claim for benefits on October 19, 1992. Director's Exhibit

administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.204(b), (c). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer has not filed a brief on appeal. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and are in accordance with law. 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 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 of the claimant to establish any of the foregoing elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *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 Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis based on the preponderance of negative x-ray readings by physicians with superior qualifications. Director's Exhibits 12, 13, 42-44, 46-49; Employer Exhibits 2-4; Decision and Order at 12; *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). Further, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2), (3) as there is no biopsy of record, this is a living miner's claim filed after January 1, 1982, and there is no

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evidence of complicated pneumoconiosis in the record. *See* 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306; Decision and Order at 13; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

With respect to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly determined that it was insufficient to establish the existence of pneumoconiosis. The administrative law judge rationally accorded greater weight to the opinions of Drs. Broudy, Fino and Dahhan, that claimant does not have pneumoconiosis, than to the contrary opinions of Drs. Baker and Vaezy, as their opinions were better documented, reasoned, and supported by the objective evidence. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985); Director's Exhibits 10, 42-44; Employer's Exhibits 2-4; Claimant's Exhibits 1, 2; Decision and Order at 14. Thus, the administrative law judge properly concluded that the preponderance of the medical opinion evidence was insufficient to establish the existence of pneumoconiosis. *Perry*, *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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson*, *supra*. Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded.[2] *Trent*, *supra*; *Perry*, *supra*.

[2] As we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis, we need not address the administrative law judge's findings pursuant to 20 C.F.R. §718.204(c). *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge