

BRB No. 98-0535 BLA

SILAS PATRICK)
)
 Claimant-Petitioner))
)
 v.)
)
 MILLER BROTHERS CONSTRUCTION) DATE ISSUED:
 COMPANY)
)
 and)
)
 OLD REPUBLIC INSURANCE COMPANY)
)
 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.

Silas Patrick, Talcum, Kentucky, *pro se*.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order

¹ Claimant is the miner, Silas Patrick, who filed an application for benefits on September 9, 1994. Director's Exhibit 1.

(97-BLA-109) 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 parties stipulated that claimant established twenty-one years of coal mine employment, and the existence of pneumoconiosis. The administrative law judge found that claimant was entitled to the presumption that his pneumoconiosis arose out of his coal mine employment pursuant to the provisions of 20 C.F.R. §718.203, and that this presumption was un rebutted by the evidence of record. The administrative law judge further found however, that the evidence of record was insufficient to establish a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). 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, as party-in-interest, has declined to participate in this appeal.

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 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe 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. *Trent, supra*; *Perry, supra*.

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 contains no reversible error therein. In the instant case, the administrative law judge correctly found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c). *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986). The administrative law judge considered all the relevant evidence, which includes seven non-qualifying pulmonary function studies,² and six non-qualifying arterial blood gas studies, and rationally

² A "qualifying" pulmonary function study or blood gas study yields values that are

determined that total disability had not been established at Section 718.204(c)(1), (2). As the record contains no evidence of cor pulmonale with right-sided congestive heart failure, the administrative law judge properly found that this element could not be established at Section 718.204(c)(3).

The administrative law judge further considered the numerous medical reports of record, and rationally concluded that total disability could not be established at Section 718.204(c)(4), since no physician's report of record diagnosed a total respiratory disability. The administrative law judge rationally determined that Dr. Powell's finding that claimant was unable to perform his usual coal mine employment because he should avoid further exposure to coal dust was not sufficient to establish that claimant was totally disabled. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988); *DeFore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Furthermore, it was within the administrative law judge's discretion to credit the reports of Drs. Anderson and Lockey, both of whom stated that claimant's pneumoconiosis did not prevent him from performing his usual coal mine work, since the administrative law judge may credit those opinions he finds are the most reasoned and persuasive. Since the administrative law judge's findings are supported by the record and applicable law, they are affirmed. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *King v. Cannelton Industries, Inc.*, 8 BLR 1-146 (1985); *Massey v. Eastern Associated Coal Corp.*, 7 BLR 1-37 (1984).

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 *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark, supra*. Consequently, we affirm the administrative law judge's findings pursuant to Section 718.204(c), as they are supported by substantial evidence and are in accordance with law. Moreover, since claimant has failed to establish a required element of entitlement under Part 718, we affirm the denial of benefits. See *Trent, supra*; *Perry, supra*.

equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (2).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge