

BRB No. 03-0352 BLA

MICHAEL LYNN MAIDEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BR & D ENTERPRISES, INCORPORATED	)	DATE ISSUED: 02/12/2004
	)	
and	)	
	)	
OLD REPUBLIC NSURANCE 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 - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. and W. Andrew Delph, Jr. (Wolfe Williams and Rutherford), Norton, Virginia, for claimant.

Tab R. Turano (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (01-BLA-0936) of Administrative Law Judge Joseph E. Kane rendered 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).<sup>1</sup> The administrative law judge found 12.84 years of coal mine employment established and, based on the filing date, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>2</sup> The administrative law found that although the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment, it was insufficient to establish a totally disabling respiratory impairment. Accordingly, benefits were denied.

On appeal, claimant contends that the evidence is sufficient to establish total respiratory disability. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) is not participating in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

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. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any 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 arguments on appeal, the administrative law judge's Decision and Order, and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence. Contrary to claimant's argument, the administrative law judge is not required to accord greater weight to the exercise portion of claimant's September 11, 2000 blood gas study when the at rest portion of that test was non-qualifying and claimant's other blood gas tests were non-qualifying as well as his valid pulmonary function studies. *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon. en banc*. 9 BLR 1-236 (1987); *Greer v. Director, OWCP*, 940 F.2d 88, 15 BLR 2-167 (4th Cir. 1991); *Sheranko v. Jones and*

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<sup>1</sup> The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup> Claimant filed his claim for benefits on January 3, 2000. Director's Exhibit 1.

*Laughlin Steel Corp.*, 6 BLR 1-797 (1984). Likewise, contrary to claimant's argument, the administrative law judge did not err in his treatment of the medical opinion evidence. The administrative law judge acknowledged the flaws in Dr. Broudy's opinion, that claimant was not totally disabled, and noted that Dr. Rasmussen's opinion that claimant was totally disabled, was well-reasoned. The administrative law judge, however, nonetheless, found that all the evidence on disability, when considered together as a whole, *i.e.*, blood gas studies, pulmonary function studies, and medical opinions, failed to establish a totally disabling respiratory impairment. This was rational. *Shedlock*, 9 BLR 1-195, *aff'd on recon. en banc* 9 BLR 1-236.

The administrative law judge is empowered to weigh the medical evidence of record and draw his own inferences therefrom, *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 as long as the administrative law judge's inferences are supported by the record. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Claimant's contentions in this case are tantamount to a request that the Board reweigh the evidence which it cannot do. *See Anderson*, 12 BLR at 1-113. Consequently, we affirm the administrative law judge's finding that the evidence, when weighed together, was insufficient to establish total respiratory disability. *See Shedlock*, 9 BLR 1-195, *aff'd on recon. en banc*. 9 BLR 1-236; *see also Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Because we affirm the administrative law judge's finding that total respiratory disability has not been established, an essential element of entitlement, we need not address employer's arguments regarding the administrative law judge's findings on the existence of pneumoconiosis and length of coal mine employment. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge