BRB No. 98-0643 BLA

LONDIS MEEK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
OLD McDONALD COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order and Decision and Order Upon Reconsideration of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Research and Defense Fund of Kentucky, Inc.), Prestonsburg, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order and the Decision and Order Upon Reconsideration (97-BLA-771) of Administrative Law Judge Richard A. Morgan 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 seventeen 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 administrative law judge found the

[1] Claimant filed his claim for benefits on December 29, 1994. Director's

evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203, but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). On reconsideration, the administrative law judge again found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the evidence of record is sufficient to establish a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b), (c). Employer responds, contending that the administrative law judge erred in finding the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203, and urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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 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).

After consideration of the administrative law judge's Decision and Order and Decision and Order Upon Reconsideration, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decisions and

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Exhibit 1.

[2] As the administrative law judge's findings pursuant to 20 C.F.R. §718.204(c)(1) - (3) are unchallenged on appeal, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-610 (1983).

Orders are supported by substantial evidence and contain no reversible error therein. The administrative law judge, in the instant case, considered the entirety of the medical opinion evidence of record and rationally found the evidence insufficient to establish total disability pursuant to Section 718.204(c)(4). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly accorded more weight to the opinions of Drs. Anderson, Broudy, Fino, Chandler and Caffrey, opining that claimant was not totally disabled, than to Dr. Sundaram's contrary opinion, based on their superior qualifications, and as better supported by the objective evidence of record. Director's Exhibits 19-23, 34, 63, 65; Employer's Exhibits 1, 2; Claimant's Exhibit 1; Decision and Order Upon Reconsideration at 2; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-26 (1988); *Perry*, *supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985). Thus, contrary to claimant's contentions, the administrative law judge provided rational reasons for his conclusions and is not required to mechanically accord greater weight to the opinion of a treating physician. *Clark*, *supra*; *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). The administrative law judge is empowered to weigh the medical evidence of record 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 own inferences on appeal. *See Clark*, *supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Furthermore, since the administrative law judge properly found that the medical evidence was insufficient to establish total disability pursuant to Section 718.204(c), lay testimony alone cannot alter the administrative law judge's finding. 20 C.F.R. §718.204(d)(2); *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish total disability pursuant to Section 718.204(c)(4) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as claimant has failed to establish total disability, a requisite element of entitlement pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded.[3]

[3] As we affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.204(c), we need not address employer's contentions pursuant to 20 C.F.R. §§718.202(a) and 718.203. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Accordingly, the administrative law judge's Decision and Order and Decision and Order Upon Reconsideration denying benefits are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge