

BRB No. 00-0615 BLA

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

Appeal of the Decision and Order on Remand and Supplemental Decision and Order Denying Motion For Reconsideration of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Carl Combs, Slemp, Kentucky, *pro se*.

Helen H. Cox (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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand and Supplemental Decision and Order Denying Motion For Reconsideration (97-BLA-911) 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 found twenty-one years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 3. Pursuant to the Board’s

---

<sup>1</sup> Claimant filed his first claim for benefits on September 15, 1992. It was denied

remand order, the administrative law judge reconsidered the newly submitted medical opinion evidence and found that it was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4), and was, therefore, insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d). *See Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). On reconsideration, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis or total disability and, therefore, denied claimant's motion for reconsideration. Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. The Director, Office of Workers' Compensation Programs, responds urging affirmance.

In an appeal filed by a claimant without the assistance of counsel, the Board considers 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); *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 in accordance with law. 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. *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)(*en banc*).

After consideration of the administrative law judge's Decision and Order on Remand and Supplemental Decision and Order Denying Motion for Reconsideration, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's

---

February 29, 1993 and June 29, 1993. Director's Exhibit 18. A second claim was filed February 26, 1996. Director's Exhibit 1. The administrative law judge denied this duplicate claim on April 3, 1998, finding that claimant failed to establish any of the elements of entitlement at 20 C.F.R. Part 718. On appeal, the Board affirmed the administrative law judge's findings pursuant to Sections 718.202(a)(1)-(4), and 718.204(c)(1)-(c)(3), but remanded the case for the administrative law judge to reconsider whether the newly submitted medical opinion evidence established total disability pursuant to Section 718.204(c)(4), and, therefore, a material change in conditions pursuant to Section 725.309(d). The Board further held that if the administrative law judge determined that a material change in conditions was established, he must then consider all the evidence relevant to Section 718.204(c)(4). *Combs v. Director, OWCP*, BRB No. 98-0958 BLA (April 9, 1999)(unpub.).

Decisions and Orders are supported by substantial evidence and contain no reversible error. The administrative law judge reconsidered the opinions of Drs. Sundaram and Wicker on remand and rationally concluded that claimant failed 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 opinion of Dr. Wicker of no respiratory disability, as he found it better supported by the objective medical data than Dr. Sundaram's opinion of significant functional limitations, which he found to be conclusory. This was proper. *See* Director's Exhibits 6, 14, 18; *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Hopton v. United States Steel Corp.*, 7 BLR 1-12 (1984); *see also Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'g* 16 BLR 1-11 (1991); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). 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 if the administrative law judge's findings are supported by substantial evidence. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the newly submitted medical opinion evidence is insufficient to establish total disability pursuant to Section 718.204(c)(4), and, therefore, a material change in conditions, as it is supported by substantial evidence and is in accordance with law.

Accordingly, the administrative law judge's Decision on Remand and Supplemental Decision and Order Denying Motion For Reconsideration are affirmed.

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge