

BRB No. 97-0674 BLA

JAMES FALSTEAD)	
)	
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 of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Jill M. Otte (Marvin Krislov, Deputy Solicitor for National Operations; 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, the United States Department of Labor.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (96-BLA-1188) of Administrative Law Judge Daniel J. Roketenetz 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). This case is on appeal to the Board for the second time. In his original Decision and Order, the administrative law judge credited claimant with five years and two months of coal mine employment, concluded that the newly submitted evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d) and adjudicated this duplicate claim on the merits pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment, see 20 C.F.R. §§718.202(a), 718.203(c), but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. Claimant appealed and in *Falstead v. Director, OWCP*, BRB No. 94-2864 BLA (Oct 30,

1995)(unpub.), the Board vacated the administrative law judge's findings with respect to a material change in conditions pursuant to 20 C.F.R. §725.309(d) and total disability pursuant to 20 C.F.R. §718.204(c)(4) and remanded the case to the district director to obtain clarification of Dr. Mettu's medical opinion or provide claimant with a new pulmonary examination. On remand, the district director provided claimant with a new pulmonary examination by Dr. Younes, Director's Exhibit 70, and claimant also submitted new medical evidence with a modification request. The district director denied modification and the case was referred to the Office of Administrative Law Judges. In his Decision and Order on Remand, the administrative law judge found that the evidence of record was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d), but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). The administrative law judge further found that the newly submitted medical evidence, considered in conjunction with the previously submitted evidence, was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(3)-(4). The administrative law judge also found that no mistake of fact occurred in the prior denial. Accordingly, the administrative law judge denied modification and, thus, benefits were denied. In the instant appeal, claimant contends that the administrative law judge erred in failing to find total disability established pursuant to 20 C.F.R. §718.204(c)(3)-(4) and to award benefits on the basis of the opinion of Dr. Handshoe. The Director, Office of Workers' Compensation Programs (the Director), responds, initially urging the Board to remand this case for further consideration of Dr. Handshoe's opinion, but also notes that the administrative law judge provided a valid alternative reason for questioning the reliability of Dr. Handshoe's opinion.¹

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon the Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 claimant 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 on Remand, the arguments raised on appeal and the evidence of record, we conclude that the Decision

¹ The Director has filed a Motion to Remand in this case to which claimant has not responded. The Board accepts the Director's Motion to Remand as his response brief and herein decides the case on its merits.

and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Claimant asserts that the administrative law judge erred in evaluating the medical opinion of Dr. Handshoe, asserting that the administrative law judge substituted his opinion for Dr. Handshoe, who stated on a questionnaire that claimant suffered from cor pulmonale with right sided congestive heart failure. We disagree. In discussing and weighing the newly submitted medical opinion of Dr. Handshoe, the administrative law judge rationally concluded that this evidence failed to establish total disability since he found that his diagnosis was not adequately explained. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); Decision and Order at 9. Moreover, the administrative law judge could reasonably question the reliability of Dr. Handshoe's diagnosis of cor pulmonale with right sided congestive heart failure and find the opinion was not well-reasoned or well-documented as this diagnosis was not mentioned in the treatment notes submitted with Dr. Handshoe's opinion. *Clark, supra*; *Hutchens, supra*; *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983); Decision and Order on Remand at 9. 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 *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark, supra*. Consequently, we affirm the administrative law judge's finding that the evidence was insufficient to establish total disability pursuant to Section 718.204(c)(3)-(4).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge