

BRB No. 97-0687 BLA

CHARLES C. REID)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SOVEREIGN COAL CORPORATION)	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 on Remand of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Charles C. Reid, Lexington, Kentucky, *pro se*.

John L. Griffith (Wells, Porter, Schmitt & Jones), Paintsville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (95-BLA-0576) of Administrative Law Judge Paul H. Teitler 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 has been before the Board previously.¹ The

¹ In its previous decision in this case, the Board affirmed the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) - (3) and total disability pursuant to 20 C.F.R. §718.204(c)(1) - (3). The Board then vacated the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(4) because he assumed that claimant established the existence of pneumoconiosis at this subsection without actually weighing the medical opinion evidence. At 20 C.F.R. §718.204(c)(4), the Board held that the administrative law judge properly determined that the opinions of Drs. Mettu and Wright were insufficient to establish total

administrative law judge reconsidered the medical opinions pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(c)(4) and concluded that claimant failed to establish the existence of pneumoconiosis or total disability. Accordingly, benefits were denied. In the instant appeal, claimant challenges the administrative law judge's findings. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not responded to this appeal.

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. See *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

disability, but noted that the administrative law judge erred in finding that Dr. Sundaram's opinion of total disability could be discredited because the pulmonary function study values obtained by the physician were non-qualifying. The Board further held that this error was harmless because the administrative law judge properly found that Dr. Jarboe's opinion that claimant is not totally disabled is entitled to greater weight than the opinions of Drs. Wright, Mettu and Sundaram on the basis of the physician's superior qualifications and the fact that his opinion is better supported by the objective evidence of record. The Board then held that the administrative law judge erred in his weighing of Dr. Hieronymus' opinion by substituting his opinion for that of a medical expert and remanded the case for further consideration of this opinion. In addition, the Board noted that on remand, the administrative law judge must consider Dr. Hieronymus' status as claimant's treating physician pursuant to *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). See *Reid v. Sovereign Coal Corp.*, BRB No. 95-2224 BLA (June 10, 1996) (unpub.).

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. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In his consideration of the evidence pursuant to Section 718.204(c)(4), the administrative law judge initially found that Dr. Sundaram, who opined that claimant was totally disabled, incorrectly noted that claimant had never smoked. Decision and Order on Remand at 6. The administrative law judge further found that Dr. Sundaram failed to state the basis of his diagnosis, and thus, the opinion was entitled to little weight.² *Id.* The administrative law judge next noted that Dr. Hieronymus was claimant's treating physician, but found that the results of the pulmonary function study performed by the physician were non-qualifying, and the physician failed to state the basis of his conclusion that claimant is totally disabled. Therefore, the administrative law judge found that the opinion was not reasoned. Lastly, the administrative law judge accorded determinative weight to Dr. Jarboe's opinion that claimant is not totally disabled because he found the opinion to be well reasoned and documented, and more recent than Dr. Hieronymus' opinion.

Dr. Hieronymus completed a standard form for the Commonwealth of Kentucky's Workers' Compensation Board in which he checked the box indicating that claimant is physically unable, from a pulmonary standpoint, to do his usual coal mine employment or comparable and gainful work, but did not indicate how he arrived at this conclusion. Director's Exhibit 20. Dr. Hieronymus also submitted a letter, dated January 8, 1992, in which he stated that claimant is permanently and totally disabled for employment in a dusty environment due to his pulmonary condition and that further exposure to dust or noxious fumes would increase the severity of that condition, but again, failed to indicate the basis of his diagnosis. Director's Exhibit 21. We therefore hold that the administrative law judge acted within his discretion in determining that Dr. Hieronymus failed to state the factors he relied on or explain how the objective data supported his diagnosis that claimant is totally disabled. See *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *White v. Director, OWCP*, 6 BLR 1-368 (1983). We also affirm his decision to accord determinative weight to Dr. Jarboe's opinion because the administrative law judge permissibly found the opinion to be well reasoned and documented. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en*

² We have previously affirmed the administrative law judge's decision to accord diminished weight to Dr. Sundaram's opinion because Dr. Jarboe had superior credentials. See *Reid*, *supra* at fn.1.

banc); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). 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 *Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Inasmuch as the administrative law judge properly considered the evidence pursuant to Section 718.204(c)(4), we affirm his finding that claimant failed to establish total disability. As we have affirmed this finding, we need not consider the administrative law judge's findings pursuant to Section 718.202(a)(4). See *Anderson, supra*; *Trent, supra*; *Perry, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge