BRB No. 02-0155 BLA

LEWIS W. MITCHELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SEA "B" MINING 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 - Rejection of Claim of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Lewis W. Mitchell, Jewell Ridge, Virginia, *pro se*.

Timothy Gresham (Penn, Stuart & Eskridge) Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Rejection of Claim (00-BLA-941) of Administrative Law Judge Edward Terhune Miller rendered on a duplicate 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).[1] The administrative law judge found fourteen years and nine months of coal mine employment established and, based on the date

[1] 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 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 3. In considering this duplicate claim, the administrative law judge concluded that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis, the element of enitlement previously adjudicated against the claimant, and thus, found that a material change in conditions was not established pursuant to the standard set forth in *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), cert denied, 510 U.S. 1090 (1997). Accordingly, benefits were denied.

On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, is not participating in 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. *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'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, the arguments on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law is supported by substantial evidence and contains no reversible error. *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found the x-ray evidence of record insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) based on the preponderance of negative x-ray readings by physicians with superior qualifications. Director's Exhibits 15, 16, 24, 27, 31-34; Employer's Exhibits 1, 3-5; 20 C.F.R. §718.202(a)(1); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988)(*en banc*); *see Staton v. Norfolk v. Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). In addition, the administrative law judge properly found that the

existence of pneumoconiosis was not established pursuant to Sections 718.202(a)(2) and (3) as there was no biopsy evidence of record, this was a living miner's claim filed after January 1, 1982, and there was no evidence of complicated pneumoconiosis in the record. Decision and Order at 7; *see* 20 C.F.R. §§718.202(a)(2), (3), 718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Considering the medical opinion evidence of record, the administrative law judge properly accorded greater weight to the opinion of Dr. Hippensteel, finding no evidence of coal worker's pneumoconiosis or any dust disease of the lungs, than to the contrary opinion of Dr. Leacock, diagnosing the existence of pneumoconiosis, as he found it better reasoned, documented, supported by objective evidence. This was rational. *Hicks*, *supra*; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31 (4th Cir. 1997); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); *Clark*, *supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). He also rationally accorded it greater weight due to Dr. Hippensteels's superior qualifications. Director's Exhibits 13, 25, 31, 33; Employer's Exhibits 5, 6; Decision and Order at 13; *Hicks*, *supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). 20 C.F.R. §§718.201, 718.202(a)(4).

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 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). We, therefore, affirm the administrative law judge's finding that the evidence failed to establish the existence of pneumoconiosis, and thus, a material change in conditions. 20 C.F.R. §§718.202(a)(1)-(4); 725.309(d)(2000); *Rutter*, *supra*; *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Accordingly, the administrative law judge's Decision and Order - Rejection of claim is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge