BRB No. 98-1441 BLA

DEAN W. UPDEGRAVE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KOCHER COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
LACKAWANNA CASUALTY COMPANY	)	
	)	
Employer/Carrier Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Maureen E. Calder (Marshall, Dennehey, Warner, Coleman and Goggin), Scranton, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (96-BLA-1890) of Administrative Law Judge Ainsworth H. Brown 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 thirty-nine 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 5. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

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, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a).[1] *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) based on the preponderance of the negative x-ray readings by physicians with superior qualifications, Director's Exhibits 9, 12-14, 26-28; Employer's Exhibits 1-3; Claimant's Exhibits 1, 3, 5, 6, 8, 11, 12, 14, 16-18, 22, 23, 26; Decision and Order at 8; *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985), and the fact that the readings of the most recent x-ray of record were in equipoise as they were interpreted positive and negative by readers with the same qualifications. Accordingly, the administrative law judge rationally found that the existence of pneumoconiosis was not established at Section 718.202(a)(1). *See Director, OWCP v.*

[1] The administrative law judge's findings pursuant to Section 718.202(a)(2) and (a)(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-616 (1983).

Greenwich Collieries [Ondecko], 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). In considering the entirety of the medical opinion evidence of record, the administrative law judge permissibly accorded greater weight to the opinions of Drs. Levinson and Ahluwalia finding no pneumoconiosis, than to the contrary opinion of Dr. Kraynak, as he found them better documented, reasoned, supported by the objective evidence of record. He also permissibly accorded greater weight to Dr. Levinson's opinion based on his superior qualifications. Decision and Order at 11; Director's Exhibits 9, 10, 30; Claimant's Exhibits 24, 44; Employer's Exhibit 11; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Dixon, supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). Moreover, contrary to claimant's contention, the administrative law judge is not required to defer to Dr. Kraynak's opinion as claimant's treating physician. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Accordingly, the administrative law judge rationally found that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(4). Further, contrary to claimant's contention, as the administrative law judge fully discussed all the evidence, the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(a), as incorporated in to the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), were not violated. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589 (1984). The administrative law judge is empowered to weigh the medical opinion evidence of record 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*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law. *Penn Allegheny Coal Co. v. Williams*, 111 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded. *Trent*, *supra*; *Perry*, *supra*.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge