BRB No. 00-0994 BLA

HENRY C. OWENS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JAMB MINING INCORPORATED	)	
	)	DATE ISSUED:
and	)	
	)	
TRAVELERS INSURANCE 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 and Decision on Motion for Reconsideration of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Henry C. Owens, Bee, Virginia, *pro se*.

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

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order and Decision on Motion for Reconsideration (99-BLA-1134) of Administrative Law Judge Rudolf L. Jansen 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).[2] The administrative law judge found, and the parties stipulated to, twenty-three and one-half years of qualifying coal mine employment. Decision and Order at 3. Considering entitlement pursuant to 20 C.F.R. Part 718, the administrative law judge found that the evidence of record was insufficient to establish a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c) (2000). Accordingly, benefits were denied. On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs has filed a letter indicating that he will not participate in this appeal.[3]

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[1]Ron Carson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.,* 19 BLR 1-88 (1995)(Order).

[2]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 65 Fed. Reg. 80,045-80,107 (2000) (to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3]As the administrative law judge's length of coal mine employment determination is

favorable to claimant and unchallenged on appeal, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on April 20, 2001, to which employer and the Director have responded asserting that the outcome of this case will not be affected by the revised regulations. Claimant has not responded to the Board's order.[4] Based on the briefs submitted by employer and the Director, and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

In an appeal filed by a claimant without the aid of counsel, the Board will consider 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). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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 filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204 (2000); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one 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*).

[4]Pursuant to the Board's instructions, the failure of a party to submit a brief within 20 days following receipt of the Board's Order issued on March 16, 2001, would be construed as a position that the challenged regulations will not affect the outcome of this case.

After consideration of the administrative law judge's Decision and Order, Decision on Motion for Reconsideration, and the evidence of record, we conclude that the Decisions and Order of the administrative law judge are supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge, in the instant case, considered the entirety of the relevant medical evidence and acted within his discretion in concluding that claimant failed to establish the existence of a totally disabling respiratory impairment. *See* Black Lung Benefits Amendments, 65 Fed. Reg. 80,049(2000), to be codified at 20 C.F.R. §718.204(b); Decision and Order at 8-9; *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge properly found that total disability pursuant to Section 718.204(c)(1)-(2) (2000) had not been established, since all of the pulmonary function and blood gas study evidence of record produced non-qualifying values.[5] Decision and Order at 8; Director's Exhibits 10, 12, 40, 43, 45, 52, 58, 61, 64. Additionally, the administrative law judge properly found that the record indicates that no physician diagnosed cor pulmonale with right sided congestive heart failure. Decision and Order at 8; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989).

[5]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

With respect to 20 C.F.R. §718.204(c)(4) (2000), the administrative law judge properly considered the entirety of the medical opinion evidence of record and rationally concluded that the medical opinion evidence did not support a finding that claimant is totally disabled from a respiratory standpoint. *Perry, supra*; *Piccin, supra*; Decision and Order at 8-9. The administrative law judge rationally considered the quality of the evidence in determining whether the opinions of record are supported by the underlying documentation and adequately explained, and acted within his discretion, as fact-finder, in finding the opinions of Drs. Iosif, Fino, Castle and Sargent, opining that claimant is not totally disabled by a pulmonary or respiratory condition, to be entitled to enhanced weight in light of their superior credentials and as their opinions are more detailed, well reasoned and documented.[6] *See Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal* Co., 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee, supra*; *Perry, supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984); Decision and Order at 8-9; Director's Exhibits 11, 40, 44, 59, 61, 64; Claimant's Exhibit 1; Employer's Exhibit 1. The administrative law judge found, and the record indicates that, Dr. Sutherland is claimant's treating physician. The administrative law judge, however, noted that Dr. Sutherland's credentials were not in the record, and found his report to be cursory and not well documented. Therefore, the administrative law judge has provided valid reason for finding Dr. Sutherland's opinion, that claimant is totally disabled, entitled to less weight. *See Tedesco v. Director*, OWCP, 18 BLR 1-103 (1994); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Clark, supra*; *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Wetzel, supra*; *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); Decision and Order at 8-9; Claimant's Exhibit 1. The administrative law judge is empowered to weigh the 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, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish total disability as it is supported by substantial evidence and is in accordance with law. *See Clark, supra*; *Piccin, supra*.

Inasmuch as claimant has failed to establish a totally disabling respiratory or

[6]This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mine industry in the Commonwealth of Virginia. *See* Director's Exhibit 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

pulmonary impairment, an essential element of entitlement pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded and we need not address the administrative law judge's offset determination. *See* Black Lung Benefits Amendments, 65 Fed. Reg. 80,049 (2000), to be codified at 20 C.F.R. §718.204(b); *Anderson, supra*; *Trent, supra*; *Perry, supra*.

Accordingly, the Decision and Order and Decision on Motion for Reconsideration of the administrative law judge denying benefits are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge