BRB No. 97-1471 BLA

WILLIAM HODGE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DONALDSON MINE 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 on Remand of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

William Hodge, Shrewsbury, West Virginia, *pro se*.

Anne B. Rembrandt (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (95 -BLA-0821) of Administrative Law Judge Robert L. Hillyard 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.[1] In the original Decision and Order, the administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis, total disability and total disability due to pneumoconiosis pursuant to 20

[1] Claimant filed his claim for benefits on September 23, 1993. Director's Exhibit 1.

C.F.R. §§718.202(a), 718.204(c) and 718.204(b). Accordingly, benefits were denied. On appeal, the Board affirmed the administrative law judge's finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(3), but vacated and remanded the case for the administrative law judge to reconsider the evidence pursuant to 20 C.F.R. §718.202(a)(4). *Hodge v. Donaldson Mine Co.*, BRB No. 95-2219 BLA (June 28, 1996)(unpublished). On remand, 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)(4). Accordingly, benefits were denied. In the instant appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs has filed a letter indicating that he will not respond 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 are 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 on Remand, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, in the instant case, rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge considered the entirety of the medical opinion evidence of record and permissibly accorded greater weight to the opinions of Drs. Walker and Zaldivar, finding no pneumoconiosis, than to the contrary opinion of Dr. Rasmussen, as their opinions were better supported by the objective evidence of record and supported by the opinions of Drs. Fino, Jarboe and Castle, who were all highly qualified physicians. Director's Exhibits 10, 24; Employer's Exhibits 3, 8-11; Decision and Order on Remand at 3; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *King v. Consolidation Coal Co.*, 8 BLR

1-167 (1985).

The administrative law judge is empowered to weigh the medical opinion 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 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)(4) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded. *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