

BRB No. 97-1650 BLA

HADLEY D. OWENS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
GARDEN CREEK POCAHONTAS CO.)	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 of Edward Terhune Miller,
Administrative Law Judge, United States Department of Labor.

Hadley D. Owens, Haysi, Virginia, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for
employer.

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

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order (96-BLA-1706) of Administrative Law Judge Edward Terhune Miller 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). The administrative law judge found at least twenty-seven years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part

¹Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant but is not representing him on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

718.² Decision and Order at 3. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.204(b), (c). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate 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, 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, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1) since all of the x-rays of record were read as negative for pneumoconiosis. Director's Exhibits 17, 18, 28, 29; Employer's Exhibit 1; Decision and Order at 4, 6; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). The administrative law judge also

²Claimant filed his claim for benefits on September 25, 1995. Director's Exhibit 1.

properly found the evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3) as there is no biopsy evidence of record, this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. See 20 C.F.R. §§718.202(a)(2), (3); Decision and Order at 6; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Further, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly found that the existence of pneumoconiosis was not established as the physicians of record did not diagnose pneumoconiosis. Director's Exhibits 13, 28; Employer's Exhibit 1; Decision and Order at 6; *Perry, supra*. 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) 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 Part 718, entitlement thereunder is precluded and we need not discuss the administrative law judge's findings pursuant to 20 C.F.R. §718.204(b), (c). *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

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge