

BRB No. 98-1271 BLA

ROY L. KINNEY )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SHIPYARD RIVER COAL TERMINAL) DATE ISSUED:  
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 and )  
 )  
 SMC MINING COMPANY c/o ZEIGLER )  
 COAL HANDLING 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 of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Billy J. Moseley, Pikeville, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden LLP), Washington, D.C., 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 (97-BLA-846) of Administrative Law Judge Daniel J. Roketenetz 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 twenty-one and one-quarter 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 and total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). 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), (4) and total disability pursuant to 20 C.F.R. §718.204(c). 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.

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'Keefe 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)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised, 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 permissibly determined that the evidence of record was insufficient to establish total disability pursuant to Section 718.204(c).<sup>1</sup> Contrary to claimant's contention, the administrative law judge permissibly found Dr. Baker's opinion that claimant should have no further exposure to coal dust insufficient to establish total disability, *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans and Grambel Co.*, 12 BLR 1-83 (1988), and that Dr. Baker's further opinion that claimant could not do sustained manual labor in a dust-free environment outweighed by the contrary opinions of record which were better supported by the objective evidence. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-191 (1989); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). 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

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<sup>1</sup> The administrative law judge's findings pursuant to Section 718.204(c)(1)-(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

inferences on appeal when they are supported by substantial evidence. *See Clark, supra; Lafferty, supra.* Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish total disability pursuant to Section 718.204(c)(4) as it is supported by substantial evidence and in accordance with law.

Inasmuch as claimant has failed to establish total disability, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded, and we need not reach claimant's arguments regarding the existence of pneumoconiosis. *Trent, supra; Perry, supra.*

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge