BRB No. 97-0876 BLA

HARRISON B. HUFF	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WESTMORELAND COAL 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 Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Harrison B. Huff, East Stone Gap, Virginia, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West 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 (96-BLA-569) of Administrative Law Judge Pamela Lakes Wood 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 administrative law judge found, and the parties stipulated to, at least thirty-six years of coal mine employment and based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part

[1] Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, 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* 20 C.F.R. §§802.211(e), 802.220; *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

718.[2] Decision and Order at 3. Noting that this was a duplicate claim, the administrative law judge considered the newly submitted evidence of record and found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204 and thus insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309. 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 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).

[2] Claimant filed his initial claim for benefits on May 11, 1970, which was denied by the Social Security Administration on May 7, 1971, and denied by the district director on June 15, 1981, for failure to establish total disability. Director's Exhibit 31. Claimant filed his second claim on September 26, 1986, which he withdrew on December 6, 1991. Director's Exhibit 31. The instant claim was filed December 28, 1994. Director's Exhibit 1.

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, rationally determined that the newly submitted evidence of record was insufficient to establish total disability pursuant to Section 718.204(c). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly found that total disability was not established pursuant to Section 718.204(c)(1)-(3) as all of the pulmonary function and blood gas studies of record produced non-qualifying values and there is no evidence of cor pulmonale with right sided congestive heart failure in the record.[3] *See* 20 C.F.R. §718.204(c)(1)-(3); Employer's Exhibit 3; Director's Exhibits 5, 9, 21, 31; Decision and Order at 9; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). Further, the administrative law judge properly considered the entirety of the newly submitted medical opinion evidence of record and permissibly concluded that the preponderance of the opinions, finding no total disability, outweighed the opinion of Dr. Williams, claimant's treating physician who diagnosed total disability, as they were more consistent with the objective evidence of record.[4] Director's Exhibits 6, 8, 21, 31; Employer's Exhibit 3; Decision and Order at 10; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985). The administrative law judge is empowered to weigh the medical evidence and to draw her 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). Consequently, we affirm the administrative law judge's finding that the newly submitted evidence of record is insufficient to establish total disability pursuant to Section 718.204(c) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as the administrative law judge properly considered claimant's newly submitted evidence and determined that it failed to establish total disability, we affirm the

[3] 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), (2).

[4] Dr. Paranthaman opined that claimant has the functional respiratory capacity to perform his last usual coal mine employment. Director's Exhibits 6, 8, 31. Drs. Turner and Miller were silent on the total disability issue. Director's Exhibit 31. Drs. Smiddy and Robinette reported normal objective studies but did not elaborate further. Director's Exhibit 31. Drs. Dahhan and Fino opined that claimant was not totally disabled by a respiratory impairment. Director's Exhibits 21, 31; Employer's Exhibit 3. Dr. Chillag opined that there was no evidence of pulmonary impairment. Director's Exhibit 21. Dr. Williams opined that claimant was totally disabled due to pneumoconiosis. Director's Exhibit 31.

administrative law judge's finding that claimant failed to establish a material change in conditions pursuant to Section 725.309. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996) *rev'g en banc Lisa Lee Mines v. Director, OWCP [Rutter]*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1985).

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

NANCY S. DOLDER
Administrative Appeals Judge