BRB No. 01-0823 BLA

JERRY L. PLYMALE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
APOGEE 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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L. C.), Pineville, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (00-BLA-710) of Administrative Law Judge Daniel L. Leland rendered 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).[1] The administrative law judge found twenty-five years and

[1] 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.

ten months of coal mine employment and the presence of a totally disabling respiratory impairment established, but concluded that the existence of pneumoconiosis was not established. Benefits were, accordingly, denied.

On appeal, claimant contends that the administrative law judge erred in not finding the existence of pneumoconiosis and causation established. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not participate in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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 into the Act 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)(*en banc*).

Claimant contends that the administrative law judge erred by mischaracterizing Dr. Rasmussen's opinion and by finding that the medical opinion evidence did not establish the existence of pneumoconiosis and causation. Claimant also contends that in reaching his determination on the existence of pneumoconiosis, the administrative law judge did not properly weigh together all the evidence relevant to the existence of pneumoconiosis pursuant to the holding of the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 1-162 (4th Cir. 2000).

Contrary to claimant's argument, after reviewing the administrative law judge's Decision and Order, we conclude that the administrative law judge properly considered all the relevant evidence pursuant to *Compton*, *supra*. Likewise, we reject claimant's contentions that the opinions of employer's physicians were based primarily on negative x-ray readings and that the doctors were biased, as claimant has failed to provide any support for these allegations. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); *Clark v. Island Creek Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Brown v. Director, OWCP*, 7 BLR 1-730 (1985). Further, contrary to claimant's argument, the administrative law judge rationally concluded that Dr. Rasmussen's finding of coal workers'

pneumoconiosis was unreasoned because it was based "solely on claimant's coal mine employment and one positive x-ray interpretation, although as noted the preponderance of the x-ray evidence is negative for pneumoconiosis," Decision and Order at 7; *Compton, supra*; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark, supra*. In both of his reports Dr. Rasmussen made plain that these were the bases for his diagnosis of pneumoconiosis. Director's Exhibit 11; Claimant's Exhibit 10. The record also supports the administrative law judge's determination that Dr. Rasmussen's finding of chronic obstructive pulmonary disease/emphysema due in part to coal mine employment was similarly unreasoned because little explanation was provided for the finding. *Clark, supra*. Thus, the administrative law judge rationally accorded greater weight to the opinions of Drs. Zaldivar and Castle, that claimant's pulmonary disease was not due to coal mine employment, because they were better reasoned than Dr. Rasmussen's, *i.e.*, "they cited a number of factors supporting their conclusion that claimant's pulmonary impairment was not related to occupational exposure to coal dust." Decision and Order at 8; *Clark, supra*; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge also properly accorded greater weight to the opinions of Drs. Zaldivar and Castle because they were better qualified. *Compton, supra*; *Hicks, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1998). Accordingly, having considered together both x-ray and medical opinion evidence, the administrative law judge rationally found that claimant failed to establish the existence of clinical or legal pneumoconiosis. *Compton, supra*.

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 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 claimant failed to establish the existence of pneumoconiosis as it is supported by substantial evidence and is in accordance with law. 20 C.F.R. §718.202(a)(1)-(4). Because we affirm the administrative law judge's finding that the existence of pneumoconiosis, an essential element of entitlement, was not established, we need not address claimant's argument regarding causation. *See Trent, supra*; *Perry, supra*.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge