

BRB No. 97-1253 BLA

JOHN HENRY JONES)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CLINCHFIELD 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 of Donald B. Jarvis, Administrative Law Judge, United States Department of Labor.

John Henry Jones, Dante, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order

¹ Claimant is the miner, John Henry Jones, who initially filed for benefits on June 1, 1979, and again on April 8, 1994. Director's Exhibits 27, 28. These applications were denied on September 25, 1980, and September 28, 1994, respectively. Director's Exhibit 28. Claimant filed the present duplicate claim for benefits on October 23, 1995. Director's Exhibit 1.

² Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the

(96-BLA-1377) of Administrative Law Judge Donald B. Jarvis 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 that claimant established thirty-eight years of coal mine employment, and that the evidence of record was insufficient to establish the existence of pneumoconiosis, or a material change in condition pursuant to 20 C.F.R. §§718.202(a), 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 is not participating in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). If the findings of fact and conclusions of law of the administrative law judge 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under Part 718, claimant must establish total respiratory disability due to pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to prove any one of these elements precludes entitlement. *Trent, supra*; *Perry, supra*.

administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

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 denying benefits is supported by substantial evidence and contains no reversible error therein. Pursuant to Section 718.202(a)(1), the administrative law judge considered the nineteen newly submitted x-ray readings, and rationally determined that they were insufficient to establish the existence of pneumoconiosis since all of the films were interpreted as negative for the presence of pneumoconiosis.³ Director's Exhibits 16, 17, 23, 24; Employer's Exhibits 1-7, 9, 10, 12, 13. As this finding is supported by the record evidence, it is affirmed.⁴

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical reports submitted with the present claim, which consists of the opinions of Drs. Sargent, Fino, Castle, and Forehand, and properly determined that they were unable to satisfy claimant's burden of proof. Specifically, the administrative law judge rationally credited the opinions of Drs. Sargent, Fino and Castle, all of whom found no occupationally acquired lung condition, but did diagnose a disabling respiratory condition due to smoking, based on their superior qualifications as board-certified in internal medicine with a specialty in pulmonary medicine. Employer's Exhibits 4, 8, 27, 28. Dr. Forehand, who diagnosed a totally disabling lung disease due to smoking and coal workers' pneumoconiosis, is board-certified only in pediatrics, immunology, and allergies. Director's Exhibits 12, 14. The administrative law judge also rationally credited the opinions of Drs. Sargent, Fino and Castle since he found that they were better documented and reasoned than Dr. Forehand's opinions as they addressed the specifics of claimant's objective tests, which Dr. Forehand did not. Lastly, the administrative law judge considered the holdings of the United States Court of Appeals for the Fourth Circuit in *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995), and *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996), and rationally determined that the

³ We note that the administrative law judge did not specifically address Dr. Spitz's x-ray reading of June 17, 1996. Employer's Exhibit 9. This omission does not require a remand however, since this film was also interpreted as negative for the existence of pneumoconiosis and cannot support claimant's burden of proof on this issue. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

⁴ We affirm the administrative law judge's finding that pneumoconiosis could not be established pursuant to 20 C.F.R. §718.202(a)(2), (3), because the record contains no biopsy evidence, and the presumptions at 20 C.F.R. §§718.304, 718.305, 718.306, are inapplicable in this living miner's claim filed after January 1, 1982 in which there is no evidence of complicated pneumoconiosis. Decision and Order at 10.

opinions of Drs. Sargent, Fino, and Castle were consistent with these holdings since they all stated that pneumoconiosis causes a mixed restrictive and obstructive pattern, which was not found in claimant's case. Since the administrative law judge has provided rational reasons for his crediting of the evidence, we affirm the Section 718.202(a)(4) finding. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). Moreover, since the administrative law judge applied the correct standard, weighed all the newly submitted evidence, and rationally determined that claimant's failure to establish the existence of pneumoconiosis, also precluded claimant from establishing a material change, we also affirm the administrative law judge's Section 725.309 finding. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

The administrative law judge is empowered to weigh the medical evidence and 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 inferences on appeal. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark, supra*. Consequently, we affirm the administrative law judge's findings pursuant to Sections 718.202(a), and 725.309 as they are supported by substantial evidence and are in accordance with law and therefore affirm the denial of benefits. See *Rutter, supra*; *Trent, supra*; *Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge