

BRB Nos. 98-1113 BLA
and 98-1113 BLA-A

CARL J. COBB)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
SHREWSBURY COAL COMPANY)	DATE ISSUED:
)	
Employer-Respondent)	
Cross-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Carl J. Cobb, Belle, West Virginia, *pro se*.

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

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

PER CURIAM:

Claimant, without the assistance of legal counsel, appeals and employer cross-appeals the Decision and Order (97-BLA-945) of Administrative Law Judge Richard A. Morgan 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 credited claimant with at least thirty years of coal mine employment and adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718.¹ The administrative law

¹ Claimant is Carl J. Cobb, the miner, who filed his current application for benefits with the Department of Labor on July 29, 1996. Decision and Order at 2; Director's Exhibit 1.

judge found that the newly submitted evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4), and thereby found that a material change in conditions was established pursuant to 20 C.F.R. §725.309. The administrative law judge further found that the evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), but insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to find that the evidence establishes total disability due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits and also cross-appeals contending that the administrative law judge erred in finding that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4) and erred in his evaluation of the medical opinions of Drs. Crisali and Zaldivar in his consideration of whether claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *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, are 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to benefits under 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Anderson v. Valley Camp of Utah*,

Claimant had previously filed a claim on December 18, 1973, which was administratively denied on October 31, 1980. Decision and Order at 2; Director's Exhibit 24. Claimant filed a second application for benefits on December 28, 1988, which was dismissed with prejudice by Administrative Law Judge Peter McC. Giesey on November 12, 1992, for claimant's failure to prosecute the claim. Decision and Order at 2; Director's Exhibit 24. As claimant took no further action within one year of that denial, it became final.

Inc., 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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, considered the entirety of the medical opinion evidence and acted within his discretion in concluding that claimant's totally disabling respiratory impairment was not due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge properly reviewed the evidence of record pursuant to the applicable standard enunciated by the United States Court of Appeals for the Fourth Circuit in *Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990) and *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990), which provide that a claimant must establish that pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment, and concluded that the evidence was insufficient to establish that pneumoconiosis contributed to claimant's total disability. *See* 20 C.F.R. §718.204(b); Decision and Order at 17-18. In so finding, the administrative law judge permissibly relied on the "more thorough and well-reasoned" opinions of Drs. Fino and Hippensteel, who found that claimant's respiratory impairment was due to asthma or smoking and not coal mine employment. Decision and Order at 17; Director's Exhibit 24; Employer's Exhibits 4, 11. In addition, the administrative law judge permissibly found that the opinion of Dr. Rasmussen, that claimant's respiratory impairment was due to the combination of smoking, asthma and pneumoconiosis and that it was not possible to separate the impact of each of these factors on claimant's impairment, was outweighed by the contrary physicians' opinions. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Piccin, supra*; Decision and Order at 17-18; Director's Exhibit 10; Claimant's Exhibits 3-5. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson, supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that claimant failed to establish total disability due to pneumoconiosis pursuant to Section 718.204(b) as it is supported by substantial evidence and is in accordance with law. Inasmuch as claimant failed to establish total disability due to pneumoconiosis pursuant to Section 718.204(b), an essential element of entitlement under 20 C.F.R. Part 718, benefits are precluded thereunder, *Anderson, supra*; *Trent, supra*, and we need not address employer's arguments on cross-appeal.

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