BRB No. 98-0270 BLA

CHILLESTINE GIBSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MCI MINING CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
CYPRUS AMAX MINERAL 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 Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Chillestine Gibson, Phippa Passes, Kentucky, *pro se*.

Bonnie Hoskins (Stoll, Keenon & Park, LLP), Lexington, Kentucky, 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 (96-BLA-00136) of Administrative Law Judge Richard E. Huddleston 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 nine and one-quarter years of coal mine employment and adjudicated

this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(c), but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in finding that the evidence was insufficient to establish total disability. *See* 20 C.F.R. §718.204(c)(1)-(4). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not participated 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. *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'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 of claimant 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).

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. In determining that total disability was not established pursuant to Section 718.204(c)(1)-(2), the administrative law judge properly considered that the pulmonary function test results varied considerably and that the validity of the earlier qualifying studies had been questioned. Decision and Order at 9-10, 18; Director's Exhibits 7, 38, 43, 45-46; Employer's Exhibit 10. The administrative law judge rationally concluded that the majority of valid studies, including the six more recent studies, were non-qualifying as was all of the blood gas study evidence of record.[1] *See Coleman v. Ramey Coal*

[1] 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 and C, respectively. A "non-qualifying" study exceeds those

Co., 18 BLR 1-9 (1993); *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); Decision and Order at 18. In addition, the administrative law judge correctly found that there is no evidence of cor pulmonale with right sided congestive heart failure, *see* 20 C.F.R. §718.204(c)(3), and that establishing total disability by this method was precluded.

In considering whether total disability was established pursuant to Section 718.204(c)(4), the administrative law judge permissibly credited the opinions of Drs. Wicker, Joyce, B. Wright, Powell, Anderson, Branscomb and Fino, that claimant was not totally disabled from a respiratory standpoint, based on their credentials and since their opinions were well-documented and well-reasoned. *See Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order at 18; Director's Exhibits 8, 38, 45; Employer's Exhibits 9-10, 12. In addition, the administrative law judge rationally gave diminished weight to Dr. Clarke's opinion as he relied on a pulmonary function study that contained values which were inconsistent with the other pulmonary function study evidence of record. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-291 (1984); Decision and Order at 18; Director's Exhibits 45, 63; Claimant's Exhibit 1. Moreover, the administrative law judge permissibly accorded less weight to the medical opinion of Dr. Bushey, that claimant was totally disabled due to pneumoconiosis, since the administrative law judge found his opinion to be conclusory and unsupported by objective evidence. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); Decision and Order at 18; Director's Exhibit 45; Claimant's Exhibit 2. 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); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, the administrative law judge properly found that the medical opinions of record failed to establish total disability pursuant to Section 718.204(c)(4). *Clark*; *supra*; *Perry*, *supra*; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Furthermore, since the administrative law judge properly found that the medical evidence was insufficient to establish total disability pursuant to Section 718.204(c), lay testimony alone cannot alter the administrative law judge's finding. *See* 20 C.F.R.

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values. *See* 20 C.F.R. §718.204(c)(1), (2).

§718.204(d)(2); *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Fields*, *supra*; *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). Inasmuch as claimant has failed to establish total respiratory disability pursuant to Section 718.204(c), an essential element of entitlement under 20 C.F.R. Part 718, entitlement thereunder is precluded. *Anderson*, *supra*; *Trent*, *supra*. Thus, we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and in accordance with law.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge