BRB No. 98-0299 BLA

WILLIAM V.H. CAPPS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK 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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Thomas M. Rhoads (Rhoads & Rhoads, P.S.C.), Madisonville, Kentucky, for claimant.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant[1] appeals the Decision and Order (97-BLA-349) of Administrative Law Judge Thomas F. Phalen, Jr. 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 parties stipulated, and the administrative law judge found, that claimant had established at least twenty-five

[1] Claimant is the miner, William V.H. Capps, who filed his application for benefits on January 26, 1996. Director's Exhibit 1.

years of coal mine employment. The administrative law judge further found that the evidence of record was insufficient to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. Decision and Order at 1-11. On appeal, claimant challenges the administrative law judge's consideration of the medical reports of record relevant to Sections 718.202(a) and 718.204(b). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, as party-in-interest, has declined to participate in this appeal.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable 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).

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 of these elements precludes entitlement. *Trent, supra; Perry, supra*.

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)(4), and Section 718.204(b), the administrative law judge rejected the opinions of Drs. Joyce, Wright and Anderson since these reports were incomplete, and the administrative law judge therefore, rationally determined that they were neither documented nor reasoned. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge also rationally credited Dr. Selby's opinion which found no evidence of totally disabling pneumoconiosis. Contrary to claimant's argument, this opinion is not hostile to the intent of the Act since Dr. Selby indicated that although in this case, claimant's obstructive impairment was not due to his coal dust exposure, it was possible for pneumoconiosis to cause such an impairment. *Adams v. Peabody Coal Co.*, 816

[2] The administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(3) are unchallenged on appeal and are therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

F.2d 1116, 10 BLR 2-69 (6th Cir. 1987); *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Stephens v. Bethlehem Mines Corp.*, 8 BLR 1-350 (1985); *Butela v. United States Steel Corp.*, 8 BLR 1-48 (1985); *Wheaton v. North American Coal Corp.*, 8 BLR 1-21 (1985).

We further reject claimant's argument that the administrative law judge erred by failing to credit the report of Dr. Traughber, since it was within the administrative law judge's discretion as the trier-of-fact to consider the relevant evidence, and credit that which he found most persuasive, regardless of Dr. Traughber's status as a Department of Labor medical examiner. Accordingly, the administrative law judge did not err by determining that Dr. Traughber's diagnosis of totally disabling pneumoconiosis was outweighed by the numerous medical reports which did not diagnose pneumoconiosis, and attributed claimant's impairment to his lengthy smoking history. *See Skukan v. Consolidation Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLA 1-77 (1988); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Moreover, we find no merit in claimant's assertions that employer's physicians are biased, since claimant has failed to provide any evidence to substantiate his allegations of bias. *Melnick*, *supra*. As we find that the administrative law judge has provided a rational basis for his findings, we conclude that substantial evidence supports the administrative law judge's determination. *Van Dyke v. Missouri Mining, Inc.*, 78 F.3d 362, 20 BLR 2-152 (6th Cir. 1996).

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, *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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's findings that claimant has not established the presence of pneumoconiosis, or total disability due to pneumoconiosis, as they are 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

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge