BRB No. 99-0131 BLA

RUSSELL A. JONES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INC.	)	DATE ISSUED: 10/15/99
	)	
and	)	
	)	
TRANSCO ENERGY 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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-0294) of Administrative Law Judge Joseph E. Kane 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 eleven years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] Decision and Order at 6, 11. The administrative law judge concluded that the evidence of record was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), but insufficient to establish the existence of pneumoconiosis or that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.204(b). Decision and Order at 11-15. Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis and that claimant's total disability is due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(b). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not 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 law. 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,

[1]Claimant filed his claim for benefits on March 4, 1997. Director's Exhibit 1.

[2]The administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(c)(1)-(4) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-616 (1983).

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*).

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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. In evaluating the relevant medical opinions pursuant to Sections 718.202(a)(4) and 718.204(b), the administrative law judge acted within his discretion in according greater weight to the opinions of Drs. Broudy and Branscomb, that claimant does not have coal workers' pneumoconiosis and that his pulmonary disorder is due to smoking, than to the opinion of Dr. Baker, that claimant has coal workers' pneumoconiosis and suffers from a severe pulmonary impairment related to smoking and coal dust exposure, as Drs. Broudy and Branscomb possess superior qualifications.[3] Decision and Order at 12, 13, 15; Director's Exhibits 9, 22; Employer's Exhibits 1, 4; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-376 (1983). Contrary to claimant's arguments, the administrative law judge adequately examined and discussed all of the relevant evidence as it relates to the existence of pneumoconiosis and disability causation and permissibly concluded that the weight of the credible evidence fails to carry claimant's burden pursuant to Sections 718.202(a)(4) and 718.204(b).[4] Decision and Order at 12, 13,

[3]Claimant asserts that Drs. Broudy and Branscomb are not better qualified than Dr. Baker. The record, in the instant case, however, indicates that Drs. Broudy and Branscomb are B-readers and Board-certified in internal medicine and that Dr. Broudy also has a subspecialty in pulmonary medicine. Director's Exhibit 22; Employer's Exhibits 1, 4. The record further indicates that Dr. Baker is a B-reader, but is devoid of any indication that he possesses additional qualifications. Director's Exhibit 13.

[4]Claimant also contends that the administrative law judge erred in discrediting Dr. Baker's opinion as the opinions of Drs. Broudy and Branscomb were more consistent with claimant's long smoking history, without determining how long claimant smoked. Claimant's Brief at 4. The administrative law judge noted that claimant reported that he smoked two or three unfiltered cigarettes per day and smoked up to one pack per day when he was drinking, which stopped in 1982. Decision and Order at 3. In addition, the record indicates that all three physicians, Drs. Baker, Broudy and Branscomb, obtained a similar smoking history from

15; Director's Exhibits 9, 22; Employer's Exhibits 1, 4; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

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. *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, as the administrative law judge in this case properly exercised his discretion as fact-finder in crediting the opinions of the physicians with superior qualifications, *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988), we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and is in accordance with law.

---

claimant. Director's Exhibits 9, 22; Employer's Exhibits 1, 4. The administrative law judge stated that Dr. Baker's opinion reflected that claimant had begun smoking in 1964 and that claimant indicated to Dr. Branscomb in 1998 that he had begun smoking about thirty-five years earlier. Decision and Order at 9-10. Although the administrative law judge did not set forth a specific length of smoking history determination, any error in this regard is harmless as the administrative law judge has provided a valid reason for according greater weight to the opinions of Drs. Broudy and Branscomb than to the opinion of Dr. Baker, *i.e.*, that Drs. Broudy and Branscomb possess superior qualifications. *See* Decision and Order at 12, 13, 15; *Carpeta v. Mathies Coal Co.*, 7 BLR 1-1445 (1984); *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-376 (1983).

Inasmuch as claimant has failed to establish the existence of pneumoconiosis and disability causation, requisite elements of entitlement pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded. *Trent, supra*; *Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge