BRB No. 99-0310 BLA

PAUL A. MILAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KITCHEKAN FUEL CORPORATION	)	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 Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Paul A. Milam, Grimsley, Tennessee, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (96-BLA-01637) of Administrative Law Judge Robert D. Kaplan 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 at least ten 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 3. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis or total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer has filed a letter indicating that it will not file a response brief. The

[1] Claimant filed his claim for benefits on April 6, 1995. Director's Exhibit 1.

Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

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 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 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. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) based on the preponderance of negative x-ray readings by physicians with superior qualifications. Director's Exhibits 12, 13, 23-26, 28; Decision and Order at 5; *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Aimone v. Morrison Knudson Co.*, 8 BLR 1-32 (1985). Further, the administrative law judge found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) and (a)(3) as there is no biopsy of record, this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. Decision and Order at 5-6; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). In addition, the administrative law judge permissibly found that Dr. Smith's diagnosis of pneumoconiosis which Dr. Smith stated was based on his positive x-ray interpretation and claimant's coal mine employment history, was not reasoned, as the physician had no special radiological qualifications and relied on an x-ray subsequently read as negative. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Worhach, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Perry, supra*; *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). Director's Exhibit 10; Decision and Order at 6. Thus, the administrative law judge rationally found that the existence of

pneumoconiosis was not established at Section 718.202(a)(4).

The administrative law judge also permissibly determined that the evidence of record was insufficient to establish total disability pursuant to Section 718.204(c). *Piccin, supra*. The administrative law judge permissibly found that total disability was not established pursuant to Section 718.204(c)(1)-(3) as all of the pulmonary function studies and blood gas studies of record produced non-qualifying values[2] and there was no evidence of cor pulmonale with right sided congestive heart failure in the record. *See* 20 C.F.R. 718.204(c)(1)-(3); Director's Exhibits 9-11; Decision and Order at 7; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). Further, the administrative law judge considered Dr. Smith's response of "not applicable" under the impairment section of his examination report, and permissibly found the opinion insufficient to establish total disability pursuant to Section 718.204(c)(4). Director's Exhibit 10; Decision and Order at 8. *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-104 (1986)(*en banc*), *aff'g on recon.*, 9 BLR 1-48 (1986)(*en banc*); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). 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, supra*. Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis and total disability pursuant to Section 718.202(a) and Section 718.204(c) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis and total disability, requisite elements of entitlement pursuant to Part 718, entitlement thereunder is precluded.

[2] 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, Appendix B, C respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge