BRB No. 99-0577 BLA

JOSEPH VILONE, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
CONSOLIDATION COAL COMPANY)		
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Gregory C. Hook (Hook & Hook), Waynesburg, Pennsylvania, for claimant.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (1998-BLA-418) 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 relevant procedural history of this case is as follows: Claimant filed his first claim for benefits on March 12, 1973 which was finally denied by Administrative Law Judge Daniel A. Sarno, Jr, on May 20, 1987. Decision and Order at 2; Director's Exhibits 33-34. Claimant filed the instant claim on June 10, 1997.

Director's Exhibit 1. The district director initially found claimant entitled to benefits. Director's Exhibit 24. The case was transferred to the Office of Administrative Law Judges for a formal hearing on January 28, 1998. Decision and Order at 2; Director's Exhibit 35.

The administrative law judge, based on an agreement by the parties, credited claimant with thirty-five years of coal mine employment and adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718. Pursuant to the governing holdings in *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied*, 519 U.S. 1090 (1997), and *Sharondale Corp. v. Ross,* 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994), the administrative law judge considered the evidence generated subsequent to the last claim and found that claimant established the existence of simple pneumoconiosis at 20 C.F.R. §718.202(a)(1) and thus established a material change in conditions pursuant to 20 C.F.R. §725.309(d). The administrative law judge further found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) and 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 blood gas study evidence established total disability, *see* 20 C.F.R. §718.204(c)(2), and erred in giving little weight to the opinions of Drs. Jaworski and Rasmussen, see 20 C.F.R. §718.204(c)(4). 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 unless requested to do so.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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 one 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. 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 total disability 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 total disability, 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 28-30. The administrative law judge rationally relied upon the opinions of Drs. Fino, Renn and Branscomb that claimant's condition was unrelated to his coal mine employment, since all three were highly-qualified physicians, board-certified in internal medicine, and two physicians also had sub-specialties in pulmonary medicine. Decision and Order at 29-30; Employer's Exhibits 1, 4-5, 8, 11-12. In reaching his conclusion, the administrative law judge noted that he had found "specific and persuasive reasons" to rely on these physicians in spite of their conclusion that claimant did not suffer from pneumoconiosis after citing the holding in *Toler v. Eastern Asso. Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995), as they "pointed out that even if the claimant had 'radiographic' [coal workers pneumoconiosis], he was nevertheless not totally disabled due to any occupational exposure to coal dust or CWP. Decision and Order at 29 n. 27. In addition, the administrative law judge permissibly found that the opinion of Dr. Rasmussen, along with the opinion of Dr. Jaworski, that claimant's respiratory impairment was due to the combination of smoking and pneumoconiosis and that it was not possible to separate the impact of each of these factors on claimant's impairment, were outweighed by the contrary physicians' opinions. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Piccin*, *supra*; Decision and Order at 24, 29.

The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *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 claimant's other arguments.

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