BRB No. 99-1325 BLA

CARSON KELLY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TROJAN MINING	)	DATE ISSUED:
	)	
and	)	
	)	
TRAVELERS INSURANCE 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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

J. Logan Griffith (Wells, Porter, Schmitt and Jones), Paintsville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-0166) of Administrative Law Judge Robert L. Hillyard 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, and employer conceded, thirteen years and five months of qualifying 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, 4, 9; Hearing Transcript at 9. 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). Decision and Order at 9-11. Accordingly, benefits were denied. On appeal, claimant contends that the opinion of Dr. Sundaram is sufficient to establish the existence of pneumoconiosis and that claimant is totally disabled pursuant to 20 C.F.R. §§718.202(a)(4) and 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.[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, 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*).

[1]Claimant filed his claim for benefits on October 16, 1996. 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)-(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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(c)(4), the administrative law judge acted within his discretion in according greater weight to the opinion of Dr. Broudy, that claimant does not have coal workers' pneumoconiosis and that he has the respiratory capacity to perform the work of an underground miner or to do similar arduous manual labor, than to the opinion of Dr. Sundaram, that claimant has coal workers' pneumoconiosis and lacks the pulmonary capacity to perform his usual coal mine employment or comparable work in a dust free environment, as Dr. Broudy has superior qualifications, his opinion is consistent with the credible objective medical evidence and is buttressed by the earlier opinions of Drs. Fritzhand and Powell.[3] Decision and Order at 10-11; Director's Exhibits 8, 27; Employer's Exhibit 1; Claimant's Exhibit 1; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *Budash v. Bethlehem Mines Corp*., 9 BLR 1-48 (1986) (*en banc*), *aff'd on recon. en banc*, 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *Perry*, *supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Pastva v. The Youghiogheny and Ohio Coal Co.*, 7 BLR 1-829 (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 total disability 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(c)(4). Decision and Order at 10-11; Director's Exhibits 8, 27; Employer's Exhibit 1; Claimant's Exhibit 1; *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

[3]The record, in the instant case, indicates that Drs. Broudy and Powell are B-readers and Board-certified in internal medicine and that Dr. Broudy also has a subspecialty in pulmonary medicine. Director's Exhibit 27; Employer's Exhibit 1. The record does not indicate that Drs. Sundaram and Fritzhand have any special qualifications. Director's Exhibit 8; Claimant's Exhibit 1.

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 Dr. Broudy in light of his superior qualifications, *see Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(en banc recon.); *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.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis and total disability, 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

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge