BRB No. 01-0117 BLA

EUGENE P. OSBORNE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
	)	
TEAYS INCORPORATED	)	DATE ISSUED:
LIBERTY BELL FUEL, INCORPORATED	)	
DALE COAL, INCORPORATED	)	
PEACHTREE COAL, INCORPORATED	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employers/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 Denying Benefits of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Robert Weinberger (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer/carrier.

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

Claimant appeals the Decision and Order Denying Benefits (00-BLA-0345) of Administrative Law Judge Jeffrey Tureck 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).[1] In accordance with a stipulation by the parties, the administrative law judge

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80, 107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, inter alia, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Association v. Chao*, Civ. No. 00-3086 (D.D.C. Aug.. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

found seventeen years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718 (2000).[2] The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2000). Accordingly, benefits were denied.

On appeal, claimant contends that the evidence of record is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. 718.202(a)(1) and (a)(4)(2000). Employer/carrier respond, 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.

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 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 under Part 718, claimant must prove 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, 718.201, 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*).

[2] Claimant filed his claim for benefits on May 13, 1999. Director's Exhibit 1.

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 permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis. 20 C.F.R. §718.202(a); *see Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). Contrary to claimant's contention, the administrative law judge, referring to the curricula vitae contained in the record, permissibly accorded greater weight to the negative readings rendered by the physicians with superior qualifications. *See* Decision and Order at 3; Employer's Exhibits 1-4; Director's Exhibits 15, 16; Claimant's Exhibits 1-3; 20 C.F.R. §718.201(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).[3] Likewise, contrary to claimant's contention, the administrative law judge could rationally accord greater weight to the opinion of Dr. Zaldivar because he found that Dr. Zaldivar had a more complete picture of the miner's health. *See* Decision and Order at 4; Employer's Exhibit 4; Director's Exhibit 12; *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); *see Clark, supra*; *Fields, supra*; *Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); *see also Fuller v. Gibralter Coal Corp.*, 6 BLR 1-1291 (1984).

[3] While claimant correctly contends that the administrative law judge did not explain what the superior qualifications of the physicians he credited were, because the administrative law judge referred to the physicians' curricula vitae, and the information contained therein supports the administrative law judge's finding, it is supported by substantial evidence. Specifically, not only were three of the four physicians who rendered negative readings Board-certified, B-readers, they were also professors of radiology. The Board has held that this is a factor which may be considered in weighing x-ray readings. *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); *see* Decision and Order at 3; Employer's Exhibits 1-4; Director's Exhibits 15, 16; Claimant's Exhibits 1-3.

The administrative law judge is empowered to weigh the medical opinion evidence of record and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1983 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark*, *supra*; *Anderson v. Valley Camp of Utah*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis as it is supported by substantial evidence and is in accordance with law. Because we affirm the administrative law judge's weighing of the x-ray evidence and the medical opinion evidence, remand for reconsideration of the evidence pursuant to *Island Creek Coal Co. v. Compton*, 203 F.3d 211, BLR (4th Cir. 2000) is unnecessary.[4]

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded. *Trent*, *supra*; *Perry*, *supra*.[5]

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

[4] The administrative law judge's findings pursuant to Sections 718.202(a)(2) and (a)(3) (2000) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[5] We need not address claimant's general contention that the evidence of record is sufficient to establish a totally disabling impairment arising out of coal mine employment as it is not sufficiently briefed. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

REGINA C. McGRANERY
Administrative Appeals Judge