BRB No. 99-0177 BLA

GORDON C. PARKS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	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 Upon Remand of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Mary Lou Smith (Howe, Anderson & Steyer, P.C.), Washington, D.C., 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 Denying Benefits Upon Remand (95-BLA-01480) of Administrative Law Judge Ainsworth H. Brown 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). Based on the date of filing, the administrative law judge adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718.[1] On remand, the

[1] Claimant filed his claim for benefits on January 24, 1992, which was denied by Judge Marden on February 5, 1996. On appeal, the Board affirmed in part, vacated in part, and remanded the case to the administrative law judge to reevaluate the x-ray evidence, reconsider whether a material change in conditions was established pursuant to 20 C.F.R.

administrative law judge concluded that the new evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a)(1) 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 would 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 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).

Claimant contends that the new x-rays of record are sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). We disagree. The administrative law judge permissibly found that the existence of pneumoconiosis was not established at Section 718.202(a)(1) based on the preponderance of the negative readings by physicians with superior qualifications. Director's Exhibits 18-21, 43-45, 48-57; Decision and Order on Remand at 3; *Staton v. Norfolk and Western Railway Co.*, 65 F.3d 55, 19 BLR

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§725.309, and if the existence of pneumoconiosis were found, to consider entitlement under the other elements. *Parks v. Leeco, Inc.*, BRB No. 96-0738 BLA (Mar. 21, 1997)(unpub.).

[2] The administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(2)-(a)(4) and 718.204(c)(1)-(c)(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-610 (1983).

2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. K arst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Further, contrary to claimant's contentions, the administrative law judge rationally considered the films dated March 10, 1992 and March 16, 1992 and Dr. Bassali's qualifications as a B reader and Board Certified Radiologist. Decision and Order at 2-3; *York v. Jewell Ridge Coal Corp.*, 7 BLR 1-766 (1985); *Stanley v. Director, OWCP*, 7 BLR 1-386 (1984). We therefore affirm the administrative law judge's weighing of the x-ray evidence as rational and in accordance with law, and affirm the administrative law judge's finding that the existence of pneumoconiosis was not established at Section 718.202(a)(1).

Claimant next contends that Dr. Baker's opinion is sufficient to establish total disability pursuant to Section 718.204(c)(4). We disagree. The administrative law judge permissibly found Dr. Baker's 1993 opinion of mild impairment on pulmonary function studies and his 1991 opinion that claimant was unable to perform his usual coal mine employment, outweighed by the contrary opinions of record, that claimant retained the respiratory capacity to perform his former coal mine employment, which he found to be better reasoned, documented and supported by the objective evidence evidence of record.[3] Director's Exhibits 13-16, 28, 43-44, 48; Decision and Order on Remand at 4; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).[4] The

[3] Contrary to claimant's contention, the administrative law judge did not discredit Dr. Baker's opinion because of the physician's reliance on a non-qualifying pulmonary function study, rather the administrative law judge permissibly accorded greater weight to the other opinions of record because he found them better supported by the objective evidence of record. *Clark, supra*; *Lucostic, supra*.

[4] Claimant's contention that a finding of total disability is mandated based on the amount of time that has passed since the initial diagnosis of pneumoconiosis, lacks merit as

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 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the new evidence of record is insufficient to establish the existence of pneumoconiosis and total disability pursuant to Sections 718.202(a) and 718.204(c) and therefore a material change in conditions pursuant to Section 725.309(d) as it is supported by substantial evidence and is in accordance with law.

Accordingly, the administrative law judge's Decision and Order Denying Benefits Upon Remand is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

claimant has not cited to any supporting medical evidence.