

BRB No. 96-1274 BLA

JOE E. WILLIAMSON )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 RIVER HURRICANE COAL COMPANY )  
 )  
 and )  
 )  
 OLD REPUBLIC INSURANCE COMPANY )  
 )  
 Employer/Carrier-Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest )

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Joe E. Williamson, Phyllis, Kentucky, *pro se*.

Terri L. Bowman (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant<sup>1</sup>, without the assistance of counsel, appeals the Decision and Order

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<sup>1</sup>Claimant is Joe E. Williamson, the miner, whose first claim for benefits was filed on February 17, 1981 and denied as abandoned on November 12, 1981. Director's Exhibit 41. Claimant filed a second claim for benefits on December 14, 1982, which was denied on July 1, 1987. Director's Exhibit 41. The Board affirmed the administrative law judge's

(95-BLA-494) of Administrative Law Judge Gerald M. Tierney 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). This claim is a duplicate claim. The administrative law judge noted that claimant previously established the existence of pneumoconiosis arising out of his coal mine employment pursuant to 20 C.F.R. § 718.202(a)(4) and 718.203(b) and total respiratory disability pursuant to 20 C.F.R. §718.204(c)(1) and (4), and found that claimant's newly submitted evidence is insufficient to establish that claimant is totally disabled due to pneumoconiosis. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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 pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

With respect to the procedural aspects of this case, we note that the administrative law judge erred in stating that the present claim is a petition for modification pursuant to 20 C.F.R. §725.310. Decision and Order at 1. Claimant's prior

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Decision and Order denying benefits on February 26, 1990. Director's Exhibit 41; *Williamson v. River Hurricane Coal Co.*, BRB Nos. 87-1966 BLA and 87-1966 BLA-A (Feb. 26, 1990)(unpub.). Claimant filed the present claim on January 5, 1994. Director's Exhibit 1.

claim was finally denied on February 26, 1990. Director's Exhibit 41; *Williamson v. River Hurricane Coal Co.*, BRB Nos. 87-1966 BLA and 87-1966 BLA-A (Feb. 26, 1990)(unpub.). The present claim was filed on January 5, 1994. Director's Exhibit 1. Because the present claim was filed more than one year after the final denial of claimant's prior claim, the present claim is a duplicate claim pursuant to 20 C.F.R. §725.309. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, has held that in order to establish a material change in conditions pursuant to Section 725.309, claimant must prove "under all of the probative medical evidence of his condition after the prior denial, at least one of the elements previously adjudicated against him." See *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1995). In the instant claim, because it was previously determined that claimant established the existence of pneumoconiosis arising out coal mine employment and total respiratory disability pursuant to Sections 718.202(a)(4), 718.203(b), and 718.204(c)(1), (4), the evidence developed subsequent to the prior denial must establish that claimant is totally disabled by his pneumoconiosis pursuant to Section 718.204(b). Director's Exhibit 41; see *Ross, supra*. Because the administrative law judge considered all of the newly submitted evidence in determining whether claimant established that his total respiratory disability was caused by his pneumoconiosis, a remand is not required. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

The record contains the opinions of seven physicians, only one of whom, Dr. Sundaram, opined that claimant was totally disabled due pneumoconiosis. Director's Exhibits 9, 21, 33; Employer's Exhibits 1-3, 5-8. Pursuant to Section 718.204(b), claimant must establish that his totally disabling respiratory impairment is due "at least in part" to his pneumoconiosis. See *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989). Upon considering the newly submitted evidence, the administrative law judge permissibly assigned greater weight to the opinions of Drs. Vuskovich, Anderson, Powell, Fino, and Branscomb, that claimant has no impairment related to pneumoconiosis, due to their superior qualifications and because the physicians "discussed in detail the Claimant's coal mine employment and his smoking, and thoroughly explained why the before mentioned employment did not contribute to the Claimant's disability." Decision and Order at 3; Director's Exhibits 21, 33; Employer's Exhibits 1-3, 5-8; see *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Perry, supra*.

The administrative law judge is empowered to weigh the 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson, supra*. Consequently, we affirm the administrative law judge's finding that the newly submitted evidence failed to establish that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Thus, claimant has failed to establish a material change in conditions pursuant to Section 725.309 and we affirm the

denial of benefits. *Ross, 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