

BRB No. 88-3334 BLA

WILLIAM CONAWAY)
)
 Claimant-Petitioner)
)
 v.)
)
ALABAMA BY-PRODUCTS)
CORPORATION)
) 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 of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Richard J. Ebbinghouse (Gordon, Silberman, Wiggins & Childs), Birmingham, Alabama, for claimant.

H. Thomas Wells (Maynard, Cooper, Frierson & Gale), Birmingham, Alabama, for employer.

Before: SMITH and DOLDER, Administrative Appeals Judges, LIPSON, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (86-BLA-4444) of Administrative Law Judge James W. Kerr, Jr. 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). Based on the date of filing, January 29, 1986,

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

the administrative law judge, considered the claim pursuant to 20 C.F.R. Part 718. After crediting claimant with 43 years of coal mine employment, the administrative law judge determined that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge then determined that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the medical opinion evidence pursuant to 20 C.F.R. §718.204(c)(4). Employer responds in support of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has chosen not to respond in this case.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are 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).

After careful consideration of the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that any error therein is harmless.¹ The administrative law judge on

¹Prior to the hearing on this claim, employer raised a duplicate claim issue which was not addressed by the administrative law judge in his Decision and Order. Any error is harmless, however, as the administrative law judge's finding that claimant failed to establish total disability and his denial of benefits are

this record properly found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(c)(4). See Decision and Order at 7; Director's Exhibit 8; Fagg v. Amax Coal Co., 12 BLR 1-77 (1988); Wetzel v. Director, OWCP, 8 BLR 1-139 (1985); Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). The administrative law judge's findings and inferences are supported by substantial evidence; we may not substitute our judgement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989).

Accordingly, the Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH,
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

SHELDON R. LIPSON
Administrative Law Judge

affirmed as supported by substantial evidence.