

BRB No. 97-0277 BLA

HERMAN DEBOARD)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey), Scranton, Pennsylvania, for claimant.

Edward Waldman (J. Davitt McAteer, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-01314) of Administrative Law Judge Ainsworth H. Brown 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 case involves a duplicate claim. The administrative law judge found that claimant established six years of qualifying coal mine employment and failed to establish total disability due to pneumoconiosis. Accordingly, benefits were denied. On appeal, claimant contends that the

¹Claimant is Herman DeBoard, the miner, whose initial claim for benefits was filed on August 13, 1973 and denied on November 6, 1980 because claimant failed to establish that his pneumoconiosis arose out of his coal mine employment or that he was totally disabled due to pneumoconiosis. Director's Exhibit 19. Claimant's present claim was filed on July 20, 1994. Director's Exhibit 1.

administrative law judge erred in determining the amount of claimant's coal mine employment, in failing to find that claimant established a change in conditions, the existence of pneumoconiosis, related to his coal mine employment, and that his total disability is due to pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), responds urging the Board to affirm the administrative law judge's finding that claimant failed to establish total disability due to pneumoconiosis and the denial of benefits.²

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 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*. Additionally, all elements of entitlement must be established by a preponderance of the evidence. See *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

On appeal, claimant contends that the administrative law judge erred in finding that he failed to establish that his total disability was due to pneumoconiosis because he relied on Dr. Ramakrishna's opinion that claimant did not have a coal dust induced pulmonary disease. Claimant's Brief at 14. In his report of August, 8, 1994, Dr. Ramakrishna diagnosed pneumoconiosis and, when asked to indicate the degree of severity of claimant's impairment, opined that claimant has no evidence of chronic pulmonary disease. Director's Exhibit 8. In his Decision and Order, the administrative law judge noted Dr. Ramakrishna's findings and properly found that his opinion would "be insufficient to demonstrate that the Claimant had successfully carried out his burden of persuasion in proving that he has a mine related disease." Decision and Order at 5.

²In its response brief, the Director concedes that claimant has established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c)(1), (4) and, thus, a material change in conditions pursuant to 20 C.F.R. §725.309. Director's Brief at 5.

Claimant also contends that the administrative law judge erred in relying on Dr. Sahillioglu's opinion to find that claimant failed to establish that his total disability was due to pneumoconiosis because Dr. Sahillioglu "waffles" on his opinion as to whether or not claimant has pneumoconiosis and ultimately opines that claimant has coal dust induced disease and a coal dust induced disability. Claimant's Brief at 15. In his report of June 27, 1995, Dr. Sahillioglu opined that claimant has pneumoconiosis which could be related to his coal mine employment and that he has "mild degree ventilation perfusion abnormalities" which are mostly due to chronic obstructive pulmonary disease (COPD) and organic heart disease. Director's Exhibit 21. In a letter dated August 11, 1995, Dr. Sahillioglu stated that, based on Dr. Barrett's negative interpretation of an x-ray dated June 27, 1995, that pneumoconiosis could be deleted from his prior medical report.³ He further stated that claimant appears to have "20 to 30% respiratory impairment due to COPD and smoking history underlying organic heart disease." Director's Exhibit 22. In his deposition of February 23, 1996, Dr. Sahillioglu stated that claimant's COPD is due to his smoking history and that claimant's obstructive disease could be caused by some degree of pneumoconiosis if pneumoconiosis was found. Claimant's Exhibit 3 at 26-31.

Upon considering Dr. Sahillioglu's opinion, the administrative law judge properly found that Dr. Sahillioglu related claimant's impairment to causes other than coal mine exposure, and properly found that this opinion was not challenged by any contrary medical opinion. Decision and Order at 5; see *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Because neither Dr. Ramakrishna's opinion nor Dr. Sahillioglu's opinion are sufficient to aid claimant in meeting his burden of persuasion, we reject claimant's contention that the administrative law judge erred in finding that claimant failed to establish total disability due to pneumoconiosis pursuant to Section 718.204(b). 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*. Thus, we affirm the administrative law judge's finding that claimant failed to establish his total disability was due to pneumoconiosis pursuant to Section 718.204(b). Further, because claimant has failed to establish total disability due to pneumoconiosis, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits and decline to address claimant's other contentions of error. See *Anderson, supra*; *Perry, supra*.

³In his letter of August 11, 1995, Dr. Sahillioglu stated that the x-ray of June 27, 1995 was read by Dr. Baker. However, at the hearing it was noted that the x-ray was actually read by Dr. Barrett. Claimant's Exhibit 3 at 23.

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

NANCY S. DOLDER
Administrative Appeals Judge