

BRB No. 97-0385 BLA

FARLEY CALDWELL)		
)		
Claimant-Petitioner)		
)		
v.)		
)		
BOW VALLEY COAL RESOURCES, INCORPORATED)		
)		
Employer-Respondent)	DATE	ISSUED:
)		
)		
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)		
)		
Party-in-Interest)	DECISION and ORDER	

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-1895) of Administrative Law Judge Ralph A. Romano 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 has three and three-quarter years of qualifying coal mine employment, and

¹Claimant is Farley Caldwell, the miner, whose initial claim for benefits was filed on December 7, 1971 and denied on August 23, 1979 after claimant failed to establish any of the elements of entitlement. Director's Exhibit 25. Claimant filed his second claim for benefits on April 18, 1994. Director's Exhibit 1.

that the newly submitted evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), total respiratory disability pursuant to 20 C.F.R. §718.204(c), or a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge also, upon considering both the previously submitted evidence and the new evidence, found that claimant failed to establish the existence of pneumoconiosis and total respiratory disability pursuant to Sections 718.202(a) and 718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in making his finding regarding the length of claimant's coal mine employment, in finding that the newly submitted evidence did not support a finding of the existence of pneumoconiosis, and thus, a material change in conditions, and that the evidence is insufficient to establish total disability due to pneumoconiosis. Employer responds urging affirmance of the Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate.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'Keefe 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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence or record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is

²We affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2), (3) and that the evidence of record did not establish total respiratory disability pursuant to 20 C.F.R. §718.204(c)(1)-(3) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

no reversible error contained therein. Claimant initially contends that the administrative law judge erred in relying solely upon claimant's Social Security records in determining the length of claimant's coal mine employment. Claimant's Brief at 2-3. In making his finding regarding the length of claimant's coal mine employment, the administrative law judge considered claimant's testimony regarding his employment, the affidavits of claimant's co-worker's, and claimant's Social Security records and acted within his discretion in finding that claimant's Social Security records are the most reliable evidence of claimant's employment. Decision and Order at 4-6; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986); *Mullins v. Director, OWCP*, 6 BLR 1-508 (1983).

Claimant also contends that the administrative law judge's finding is erroneous because the Social Security records indicate that claimant has nine years of coal mine employment. Claimant's Brief at 3. Prior to determining the amount of claimant's coal mine employment, the administrative law judge permissibly stated that he would credit claimant with every quarter in which the Social Security records indicate that he earned \$50.00 or more. Decision and Order at 4; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Tackett v. Director, OWCP*, 6 BLR 1-839 (1984). After considering claimant's records, the administrative law judge properly found that the Social Security records indicate that claimant has fifteen quarters in which he worked as a coal miner. Decision and Order at 6; Director's Exhibit 3. Thus, we affirm the administrative law judge's finding that claimant established three and three-quarter years of qualifying coal mine employment. *Justice, supra*; *Vickery, supra*.

With respect to the medical evidence of record, claimant contends that the administrative law judge erred in finding that Dr. Clarke's opinion is sufficient to establish total respiratory disability and invocation of the interim presumption pursuant to Section 727.203.³ Claimant's Brief at 7-9. Dr. Clarke, in a report dated August 23, 1994, opined that claimant is totally disabled due to "2/2, p coal worker's pneumoconiosis." Director's Exhibit 8. The administrative law judge permissibly found Dr. Clarke's opinion to be unreliable because it is not supported by his underlying objective data and because he did not explain how he reached his conclusions. Decision and Order at 12; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Further, the administrative law judge rationally assigned greater weight to the opinions of Drs. Baker and Dahhan, both of whom opined that claimant does not have total respiratory disability, because their opinions are well reasoned and supported by the other

³Because this claim was filed after March 31, 1980, the administrative law judge properly applied the 20 C.F.R. Part 718 regulations to this claim. See *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). Thus, we reject claimant's contention that the administrative law judge erred in failing to find that claimant established invocation of the interim presumption pursuant to 20 C.F.R. §727.203.

evidence of record.⁴ Decision and Order at 12; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark, supra*; *Lucostic, supra*; *Peskie, 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, supra*; *Anderson, supra*. Consequently, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability Section 718.204(c). As claimant has failed to establish total respiratory disability, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits and thus we need not address claimant's contentions with respect to 20 C.F.R. §718.202(a).⁵ See *Anderson, supra*; *Perry, supra*.

⁴The administrative law judge properly noted that Dr. Botto did not offer an opinion regarding claimant's disability. Claimant's Exhibit 1. The administrative law judge also considered Dr. Rader's opinion, which was the only medical report submitted in the prior claim, opining that claimant was totally disabled for hard labor in November, 1973 and that the pulmonary condition would get worse. Director's Exhibit 25. The administrative law judge found that the newly submitted evidence shows that claimant's condition has become better and weighing all the evidence rationally concluded that claimant failed to establish total disability. *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-197 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*).

⁵Inasmuch as we affirm the denial of benefits based on the administrative law judge's consideration of the merits, we need not address the duplicate claims issue in this case. 20 C.F.R. §725.309; *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994); *Dotson v. Director, OWCP*, 14 BLR 1-10 (1990).

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