BRB Nos. 97-0483 BLA
and 97-0483 BLA-A

GILLIS FIELDS, JR.	)	
Claimant-Petitioner	)	
v.	)	
HUB COAL CORPORATION	)	DATE ISSUED:
Employer-Respondent Cross-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Cross-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Donna Roark Stewart (Law Office of Phillip Lewis), Hyden, Kentucky, for claimant.

Eric R. Collis (Lynch, Cox, Gilman, & Mahan, P.S.C.), Louisville, Kentucky, for employer.

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, the United States Department of Labor.

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

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order (96-BLA-560) of Administrative Law Judge Daniel J. Roketenetz 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). The parties stipulated, and the administrative law judge found, that claimant established twenty-one years of coal mine employment. The administrative law judge further found that although the evidence of record was sufficient to establish the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c), the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his weighing of the medical evidence relevant to 20 C.F.R. §718.202(a)(1), (4). Employer responds, urging affirmance, and in its cross-appeal, asserts that it is not the operator potentially liable for payment of this claim. The Director, Office of Workers' Compensation Programs (the Director), has declined to address the merits of claimant's appeal, but asserts that the named employer is the properly designated responsible operator herein.

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 applicable 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 prove 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 one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and there is no reversible error contained therein. In the instant case, the administrative law judge rationally found that the existence of pneumoconiosis had not been established pursuant to Section 718.202(a)(1). Contrary to claimant's contention, the administrative law judge fully considered the qualifications of each physician who submitted an x-ray reading, in addition to the numerical weight of the x-ray evidence. Decision and Order at 6-8. It was within the administrative law judge's discretion to credit the greater number of negative x-ray readings of Drs. Barrett, Sargent and Wicker, due to their superior qualifications as board-certified radiologists and B-readers,[1] and the unanimously negative interpretations by B-readers, of the most recent x-ray of record. Director's Exhibits 12, 13, 38-41; *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director,*

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[1] A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination by the National Institute of Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135 n.16, BLR 2-1 n.16 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

OWCP, 8 BLR 1-139 (1985).

We also find no merit in claimant's contention that the administrative law judge erred by failing to find the existence of pneumoconiosis established at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the three medical reports of record, and rationally accorded less weight to Dr. Clarke's diagnosis of pneumoconiosis, since this physician was unaware of claimant's lengthy smoking history. Director's Exhibits 10, 17; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark, supra; Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). The administrative law judge permissibly accorded greater weight to the opinion of Dr. Wicker, who diagnosed the absence of pneumoconiosis, over the contrary opinion of Dr. Myers, as Dr. Wicker's report was the most recent report of record, as well as being better documented and reasoned. The determination of whether a medical report is documented and reasoned, and whether to credit the more recent evidence of record, is within the discretion of the administrative law judge. As the administrative law judge has provided a rational basis for his determination, we hold that substantial evidence supports the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis. *Trumbo, supra; Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986).

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, *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 v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the existence of pneumoconiosis has not been established pursuant to Section 718.202(a) as it is supported by substantial evidence and in accordance with law.[2] As claimant has failed to establish a required element of proof pursuant to Part 718, we affirm the denial of benefits. *Trent, supra; Perry, supra*. This holding renders discussion of the issues raised in employer's cross-appeal, unnecessary.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief

Administrative Appeals Judge

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[2] We affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2)-(3), because the record contains no biopsy evidence, and the presumptions at 20 C.F.R. §§718.304, 718.305, 718.306, are inapplicable in this living miner's claim filed after January 1, 1982 in which there is no evidence of complicated pneumoconiosis. We further affirm the findings pursuant to 20 C.F.R. §718.204(c) as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

NANCY S. DOLDER

Administrative Appeals Judge

REGINA C. MCGRANERY

Administrative Appeals Judge