BRB No. 98-0767 BLA

PHYLLIS COLE (Widow of WILLARD COLE) Claimant-Petitioner v. DEAN JONES COAL COMPANY Employer-Respondent 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 Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Phyllis Cole, Pennington Gap, Virginia, *pro se*.

Laura Metcoff Klaus (Arter & Hadden, LLP), Washington, D.C., for employer.

Before: BROWN and McGRANERY, Administrative Appeals Judges and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, on behalf of the deceased miner and without the assistance of counsel,[1] appeals the Decision and Order (97-BLA-1154) of Administrative Law Judge Mollie W. Neal 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 administrative law judge found eight and one-quarter years of coal mine employment

[1] Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1985)(Order).

and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.[2] Decision and Order at 3. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis or total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Accordingly, benefits were denied. On appeal, claimant generally contends that she is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, 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).

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish the existence of 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 of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *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 of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of

[2] The miner filed his claim for benefits on May 23, 1996, which was denied by the Office of Workers' Compensation Programs on August 20, 1996 and March 19, 1997. Director's Exhibits 1, 15, 32. The miner died December 31, 1996. Claimant's Exhibit 2. Claimant, the miner's surviving spouse, is pursuing the miner's claim. Director's Exhibits 1, 8.

pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) as all the x-rays of record were read as negative for pneumoconiosis. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); Director's Exhibits 13, 14, 27-31, 33; Employer's Exhibit 4; Decision and Order at 14. Further, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) and (3) as there is no biopsy of record, the miner died after March 1, 1978, in this claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. Decision and Order at 14; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). In addition, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly found the hospital records and Dr. Smiddy's opinion diagnosing pneumoconiosis, outweighed by the contrary opinions of Drs. Paranthaman, Castle, Branscomb, Dahhan and Kleinerman, as these opinions are better supported by the objective evidence of record and in light of the physicians' superior qualifications. Director's Exhibit 11, 23, 26; Employer's Exhibits 1-3, 5-12; Claimant's Exhibit 3; Decision and Order at 15; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). We therefore affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a) as supported by substantial evidence.

The administrative law judge, in the instant case, also permissibly determined that the evidence of record was insufficient to establish total disability pursuant to Section 718.204(c). *Piccin, supra*. The administrative law judge permissibly found that total disability was not established pursuant to Section 718.204(c)(1)-(3) as all of the reliable pulmonary function studies and blood gas studies of record produced non-qualifying values[3] and there is no evidence of cor pulmonale with right sided congestive heart failure in the record. *See* 20 C.F.R. §718.204(c)(1)-(3); Director's Exhibits 10, 12, 26; Claimant's Exhibit 3; Decision and Order at 15; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). Further, the administrative law judge properly considered the entirety of the medical opinion evidence of record and permissibly found total disability was not established pursuant to Section 718.204(c)(4) as none of the physicians of record opined that claimant was totally disabled. Director's Exhibit 11, 23, 26; Employer's Exhibits 1-3, 5-12; Claimant's Exhibit 3; Decision and Order at 15;

[3] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendix B, C respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

Budash v. Bethlehem Mines Corp., 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon.*, 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986). The administrative law judge is empowered to weigh the medical 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 v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis and total disability pursuant to Section 718.202(a) and Section 718.204(c) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis and total disability, requisite elements of entitlement pursuant to Part 718, entitlement thereunder is precluded. *Trent*, *supra*; *Perry*, *supra*.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge