

BRB No. 97-0986 BLA

B. F. CAUDILL	)		
	)		
Claimant-Respondent	)		
	)		
v.	)		
	)		
CUMBERLAND RIVER COAL COMPANY	)		
	)	DATE	ISSUED:
Employer-Petitioner	)		
	)		
	)		
DIRECTOR, OFFICE OF WORKERS'	)		
COMPENSATION PROGRAMS, UNITED	)		
STATES DEPARTMENT OF LABOR	)		
	)		
Respondent	)	DECISION and ORDER	

Appeal of the Decision and Order on Remand of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

Cathryn Celeste Helm (Marvin Krislov, Deputy Solicitor for National Operations; 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, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (94-BLA-1923) of Administrative Law Judge Paul H. Teitler awarding 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 claim is before the Board for the second time. In

the initial Decision and Order, the administrative law judge found that claimant<sup>1</sup> established twenty-seven years of qualifying coal mine employment and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), 718.204(b), (c)(4). Accordingly, benefits were awarded. On appeal, the Board affirmed the administrative law judge's findings pursuant to Sections 718.202(a)(4), 718.203(b), and 718.204(b), but vacated the administrative law judge's finding that claimant established total respiratory disability pursuant to Section 718.204(c)(4) and remanded the claim for the administrative law judge to reconsider the evidence pursuant to Section 718.204(c)(4) and to clarify his order regarding the date for the commencement of benefits, if benefits were again awarded. *Caudill v. Cumberland River Coal Co.*, BRB No. 95-2257 BLA (Nov. 26, 1996)(unpub).

On remand, the administrative law judge again found that claimant established total respiratory disability pursuant to Section 718.204(c)(4) and determined that benefits are payable as of October 1, 1992. Accordingly, benefits were awarded. On appeal, employer contends that the administrative law judge erred in finding total respiratory disability pursuant to Section 718.204(c)(4). Claimant has not responded to the appeal. The Director, Office of Workers' Compensation Programs (the Director), responds urging the Board to reject employer's contention that the administrative law judge erred in referring to the Dictionary of Occupational Titles in making his findings pursuant to Section 718.204(c)(4).<sup>2</sup>

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*,

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<sup>1</sup>Claimant is B.F. Caudill, the miner, who filed a claim for benefits on October 26, 1992. Director's Exhibit 1.

<sup>2</sup>We affirm the administrative law judge's findings regarding the date of entitlement to benefits as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

*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 on Remand, the arguments raised on appeal and the evidence on record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Initially, employer contends that the administrative law judge erred in going outside of the record to consult the Dictionary of Occupational Titles and in determining that claimant's work, as described by claimant, constitutes heavy work. Employer's Brief at 8-10. In making his finding regarding the nature of claimant's coal mine employment, the administrative law judge first noted that claimant stated in a Department of Labor form and his hearing testimony that he would sit one hour for every five hours on his feet and that he was required to lift items in excess of twenty pounds ten times per day and that he would lift items as heavy as 100 pounds once per day. Decision and Order on Remand at 3-4; Director's Exhibit 10; Hearing Transcript at 10-13. The administrative law judge then determined that, based on claimant's testimony, claimant's coal mine employment fits in the category of "Heavy Work" as defined in the Dictionary of Occupational Titles. Decision and Order on Remand at 4.

Contrary to employer's contention, the administrative law judge acted within his discretion in taking judicial notice of the Dictionary of Occupational Titles and in comparing claimant's testimony regarding his usual coal mine employment to the definitions contained therein. Decision and Order on Remand at 4; *Maddaleni v. The Pittsburg & Midway Coal Mining, Co.*, 14 BLR 1-135 (1990); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). Further, the administrative law judge rationally found that the exertional level of claimant's coal mine employment fits in the category of "Heavy Work", which is defined in the Dictionary of Occupational Titles as "exerting up to 100 pounds of force occasionally, and /or up to 50 pounds of force frequently, and/or up to 20 pounds of force constantly to move objects." Decision and Order on Remand at 4; *Lafferty, supra*; Dictionary of Occupational Titles, U.S. Department of Labor, 4th Edition Supplement, 1986, page 102. Consequently, we affirm the administrative law judge's finding that claimant's usual coal mine employment is classified as heavy work.

Employer next contends that the administrative law judge erred in weighing the opinions of Drs. Broudy, Wright, Baker, Sundaram and Chaney pursuant to Section 718.204(c)(4). Employer's Brief at 10-20. Drs. Wright, Baker, Sundaram and Chaney opined that claimant is disabled from a pulmonary standpoint, while Dr. Broudy opined that claimant has no pulmonary disability. Director's Exhibits 13, 14, 34, 40-42; Claimant's Exhibits 6, 7. The administrative law judge rationally concluded that the preponderance of the medical opinion evidence supports a finding of total respiratory disability pursuant to Section 718.204(c)(4). Decision and Order on Remand at 9; *Lafferty, supra*; *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986); *Perry, 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. *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 established total respiratory disability pursuant to Section 718.204(c), and the award of benefits, as they are supported by substantial evidence and in accordance with law.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge