

BRB No. 97-1084 BLA

GRADY W. McGLOTHLIN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ISLAND CREEK COAL COMPANY)	DATE ISSUED:
)	
Employer)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Frederick D. Neusner, Administrative Law Judge, United States Department of Labor.

Grady W. McGlothlin, Raven, Virginia, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMTH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order (96-BLA-1246) of Administrative Law Judge Frederick D. Neusner 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

¹ Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant but is not representing him on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

administrative law judge found thirty-four and one-quarter years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.² Decision and Order at 2. The administrative law judge concluded that the evidence of record was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c), but insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, filed a letter indicating that he will 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'Keefe 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 establish 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 of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

² Claimant filed his claim for benefits on October 6, 1994. Director's Exhibit 1.

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 that there is no reversible error contained therein. The administrative law judge, in the instant case, rationally determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly found that the x-ray evidence of record was in equipoise and thus insufficient to establish the existence of pneumoconiosis in light of the preponderance of negative x-ray interpretations by physicians with superior qualifications and the most recent x-ray evidence. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251 (1994), *aff'g* 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Director's Exhibits 12-15, 26-30; Decision and Order at 3-4. Further, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly found the evidence insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4).³ *Piccin, supra*. The administrative law judge rationally accorded more weight to the opinions of Drs. Iosif and Castle, that claimant does not suffer from pneumoconiosis or any impairment, than to the opinion of Dr. Sutherland, that claimant is disabled as a direct result of dust exposure, based on their superior credentials and as better reasoned, documented, and supported by the other evidence of record. Director's Exhibits 10, 28, 31, 33, 37; Decision and Order at 4-5; *Clark, supra*; *Dillon v. Peabody Coal Co.*, 11 BLR 1-26 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985). The administrative law judge is empowered to weigh the medical opinion evidence of record 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*, 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

³ The administrative law judge properly found that claimant could not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(2) and (3) as there is no autopsy or biopsy evidence of record, this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. See 20 C.F.R. §§718.202(a)(2), (3); *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law.⁴

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

⁴ The administrative law judge also permissibly determined that the Social Security Administration disability determination was not binding in this proceeding and that the medical data upon which the Social Security Administration relied was not part of the record before him. 20 C.F.R. §718.206; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Wenanski v. Director, OWCP*, 8 BLR 1-487 (1986); *Miles v. Central Appalachian Coal Co.*, 7 BLR 1-744 (1985); *Reightnouer v. Director, OWCP*, 2 BLR 1-334 (1979).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge