BRB Nos. 03-0260 BLA
and 03-0260 BLA-A

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| DAVID M. KRISCH | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| KRISCH COAL COMPANY | ) | DATE ISSUED: 12/19/2003 |
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| and | ) | |
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| SECURITY INSURANCE FUND OF HARTFORD | ) | |
| | ) | |
| Employer/Carrier-Respondents Cross-Petitioners | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order - Denying of Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

James M. Poerio (Tucker Arensburg, P.C.), Pittsburgh, Pennsylvania, for employer.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (01-BLA-1076) of Administrative Law Judge Richard A. Morgan rendered on a duplicate 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).[1] The administrative law judge found 26.97 years of coal mine employment established and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 5. In considering this duplicate claim, the administrative law judge concluded that the newly submitted evidence established total disability, an element previously adjudicated against claimant, and thus found a material change in conditions established. On considering all the evidence of record, however, the administrative law judge found that it was insufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence was insufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis. On cross-appeal, employer contends that, although the denial of benefits in this claim was proper, the administrative law judge erred in finding that employer was the responsible operator. The Director, Office of Workers' Compensation Programs, responds, contending solely that the administrative law judge properly designated employer as the responsible operator.

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 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

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 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*).

Claimant first contends that he has submitted more than sufficient evidence to support entitlement, *i.e.*, numerous positive x-ray readings, including those by B-readers, at least one qualifying pulmonary function study, and the opinion of Dr. Schaaf, a board-certified pulmonologist, who found claimant disabled from pneumoconiosis. We reject the general allegation regarding the x-ray evidence, however, inasmuch as claimant merely recites to favorable evidence, but does not point, with specificity, to any error made by the administrative law judge in his consideration of the x-ray evidence. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). As the administrative law judge fully discussed his reason for finding that the x-ray evidence established neither the existence or nonexistence of pneumoconiosis, and that finding is supported by the record, claimant's general allegation is no more than a request that we reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Moreover, claimant's general allegation that claimant has a qualifying pulmonary function study does not support a finding that claimant has established the existence of pneumoconiosis, *see* 20 C.F.R. §718.202(a)(1)-(4), and the administrative law judge has found total disability established.

Claimant does contend, however, with sufficient specificity, that the administrative law judge erred in finding that the existence of pneumoconiosis was not established based on Dr. Solic's opinion, when the opinion of Dr. Schaaf, an equally qualified physician, that claimant had pneumoconiosis, was better reasoned and supported by the record.[2]

In finding that the medical opinion evidence failed to establish the existence of pneumoconiosis, the administrative law judge accorded greater weight to the opinion of Dr. Solic because he conducted the most recent examination of claimant and because his opinion was based on more extensive clinical testing than Dr. Schaaf's. This was permissible. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1986)(*en banc*);

[2] Claimant has not challenged the administrative law judge's finding that the opinions of Drs. Green, Begley, and Trinidad are insufficient to establish the existence of pneumoconiosis as defined by the Act. The administrative law judge's findings regarding these doctors' opinions are, therefore, affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

*see Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-381 n.4 (1983). The administrative law judge concluded, therefore, based on his consideration of the medical evidence along with the x-ray evidence of record that claimant failed to establish the existence of pneumoconiosis. This was proper. *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

The administrative law judge is empowered to weigh the medical evidence of record and 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 if the administrative law judge's findings are supported by substantial evidence, *see Anderson*, 12 BLR at 1-113 (1989). Consequently, we affirm the administrative law judge's finding that the evidence failed to establish the existence of pneumoconiosis. Because claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, we need not consider his argument regarding disability causation. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1. Likewise, because we affirm the administrative law judge's denial of benefits, we need not reach employer's responsible operator argument. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order – Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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PETER A. GABAUER, Jr.
Administrative Appeals Judge