

BRB No. 99-0511 BLA

LLOYD HORNE)
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED:
)
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Barry H. Joyner (Henry L. Solano, 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, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (984-BLA-0411) of Administrative Law Judge Ralph A. Romano 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 credited claimant with ten years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §718.202(a)(1), but insufficient to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to Section 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. On

appeal, claimant argues that the administrative law judge erred in his weighing of the pulmonary function study and medical opinion evidence. The Director, Office of Workers' Compensation Programs (the Director), responds, contending that the administrative law judge's decision is supported by substantial evidence and should be affirmed.¹

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 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 under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the 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 prove 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*).

¹ The administrative law judge's findings pursuant to 20 C.F.R. §718.204(c)(2), (3) are unchallenged on appeal and therefore are affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 contains no reversible error therein. Initially, claimant contends that the administrative law judge erred in failing to find the existence of a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c)(1) based on the pulmonary function study evidence. We disagree. The administrative law judge noted that only the April 30, 1998, pulmonary function study was qualifying,² while the August 27, 1997, study was non-qualifying and the June 24, 1998, study was non-qualifying and had been invalidated by a reviewing physician, Dr. Ranavaya. Decision and Order at 6-7; Director's Exhibit 7; Claimant's Exhibits 1, 5. Relying on the August 27, 1997, non-qualifying pulmonary function study, which he found was the most probative and credible pulmonary function study of record, the administrative law judge concluded that the pulmonary function study evidence was insufficient to establish total disability pursuant to Section 718.204(c)(1). Decision and Order at 7; Director's Exhibit 7. In making this determination, the administrative law judge noted that the studies were "effort-dependent" and permissibly gave the most weight to the study he found to be the most reliable over the other studies. See *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985); *Bolyard v. Peabody Coal Co.*, 6 BLR 1-767 (1984); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). We therefore affirm the administrative law judge's finding that the evidence was insufficient to establish total disability pursuant to Section 718.204(c)(1).

In considering whether total disability was established under Section 718.204(c)(4), the administrative law judge permissibly credited the opinion of Dr. Green, which found that claimant was not totally disabled from a respiratory standpoint, because his conclusion was better supported by the credible objective medical evidence. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-291 (1984); Decision and Order at 7-8; Director's Exhibit 8. Furthermore, the administrative law judge permissibly accorded less weight to the opinion of Dr. Kraynak based on the physician's failure to adequately explain how the objective data supported his findings in light of the non-qualifying pulmonary function and blood gas studies of record as well as the disparity between the values obtained on the pulmonary function studies he administered and the values obtained on the

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

pulmonary function study administered by Dr. Green. See *Burich v. Jones & Laughlin Steel Corp.*, 6 BLR 1-1189 (1984); see also *Clark, supra*; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); Decision and Order at 7-8; Claimant's Exhibits 3, 13. 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). Furthermore, since the administrative law judge properly found that the medical evidence was insufficient to establish total disability pursuant to Section 718.204(c), lay testimony alone cannot alter the administrative law judge's finding. See 20 C.F.R. §718.204(d)(2); *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Fields, supra*; *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). As claimant has failed to establish total respiratory disability pursuant to Section 718.204(c), an essential element of entitlement, an award of benefits is precluded under 20 C.F.R. Part 718. *Anderson, supra*; *Trent, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge