

BRB No. 97-0669 BLA

PAUL C. NAPRAVA)	
)	
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 Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Debra A. Smith (Krasno, Krasno & Quinn), Pottsville, Pennsylvania, for claimant.

Gary K. Stearman (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, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (96-BLA-00848) of Administrative Law

¹ Claimant is Paul C. Naprava, the miner, who filed his first application for benefits on February 24, 1982. Director's Exhibit 1. The district director denied the claim on April 16, 1982, Director's Exhibit 12, and on April 6, 1983, claimant filed a petition for modification, Director's Exhibit 13, which was denied on October 26, 1989. Director's Exhibit 16. On September 13, 1990, claimant filed a second claim which was treated as a request for modification pursuant to 20 C.F.R. §725.310. Director's Exhibits 19, 29. In a Decision and Order denying benefits issued on August 24, 1992, the administrative law judge found that claimant established eighteen and three quarter years of coal mine employment but failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and

Judge Robert D. Kaplan 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). This case is before the Board for the second time. The administrative law judge found that the parties stipulated that claimant has pneumoconiosis which arose from his coal mine employment and that he has eighteen and three-quarter years of coal mine employment. The administrative law judge then found that the newly submitted evidence, and the evidence as a whole, fails to establish total respiratory disability pursuant to Section 718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the medical opinions of Drs. Kraynak and Corazza pursuant to Section 718.204(c)(4). The Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance of the administrative law judge's Decision and Order.²

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'Keefe 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*

total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Director's Exhibit 57. On appeal, the Board affirmed the administrative law judge's findings regarding the length of coal mine employment and pursuant to Section 718.204(c) and the denial of benefits. *Naprava v. Director, OWCP*, BRB No. 92-2659 BLA (Mar. 30, 1994)(unpub.). Claimant filed a third petition for modification on March 14, 1995. Director's Exhibit 64.

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

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, 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, 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. Claimant contends that the administrative law judge erred in weighing the opinions of Drs. Kraynak and Corraza. Claimant's Brief at 3-4. Dr. Corraza, in a report dated April 10, 1995, diagnosed chronic bronchitis, from history, and noted that the etiology is unclear. He further opined that claimant has no medical evidence of significant respiratory impairment. Director's Exhibit 74. Dr. Kraynak, in a report dated March 8, 1995, opined that claimant is totally disabled due to pneumoconiosis. Director's Exhibit 66.

The administrative law judge acted within his discretion in finding that Dr. Kraynak's opinion is not well reasoned because it is based upon invalid objective data. Decision and Order at 15-16; *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Lafferty v. Cannelton Industries Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge also rationally accorded greater weight to Dr. Corraza's opinion due to his superior qualifications.³ *Parulis v. Director, OWCP*, 15 BLR 1-28 (1991); *Lafferty, supra*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Perry, supra*; Decision and Order at 17.

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. See *Clark, supra*; *Anderson, supra*. Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c) as it is supported by substantial evidence and in accordance with law. Further, because claimant has failed to establish total respiratory disability, an essential element of entitlement

³ Claimant also contends that the administrative law judge erred in relying on Dr. Corraza's opinions because he did not diagnose the existence of pneumoconiosis. Claimant's Brief at 3-4. We reject this contention because the physician's failure to diagnose pneumoconiosis would affect the credibility of his finding regarding the causation of claimant's respiratory impairment but not his opinion as to whether or not claimant has total respiratory disability.

pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits. See *Anderson, supra*; *Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge