BRB No. 99-1096 BLA

ROBERT L. MILLER	)	
	)	
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 Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

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

Jennifer U. Toth (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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (1999-BLA-00025) of Administrative Law Judge Ainsworth H. Brown 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 adjudicated this claim pursuant to 20 C.F.R. Part 718 and found that the evidence was 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. *See* 20 C.F.R. §718.204(c)(1), (4). 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'Keeffe 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 the February 15, 1999 and February 23, 1999 pulmonary function studies were qualifying and that both studies had been invalidated by a reviewing physician, Dr. Sahillioglu, while the April 2, 1998, pulmonary function study by Dr. Rashid was non-qualifying.[2] Decision and Order at 3-4; Director's Exhibits 11, 21; Claimant's Exhibits 17-18. The administrative law judge found that the April 1998 non-qualifying pulmonary function study was the most probative and credible pulmonary function study of record and therefore concluded that the pulmonary function study evidence was insufficient to establish total disability pursuant to Section 718.204(c)(1). Decision and Order at 4. In making this determination, the administrative law judge noted that the studies were "effort-dependent" and permissibly rejected the invalidation of the April 1998 study by Dr. R. Kraynak because the physician failed to cite any medical support for his conclusions and because Dr. Rashid possessed greater expertise based on his credentials.[3] *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). The administrative law judge also rationally concluded that the validity of the February 1999 pulmonary function study was at best in equipoise due to the disagreement among Dr. Sahillioglu, Dr. R. Kraynak and Dr. M. Kraynak, and thus, claimant had failed to meet his burden of proof. *Director, OWCP v. Greenwich Collieries* [Ondecko], 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); Decision and Order at 3. Furthermore, contrary to claimant's assertion, the administrative law judge did not credit Dr. Sahillioglu's opinion over Dr. R. Kraynak's opinion on the basis that Dr. Sahillioglu was Board-eligible in internal medicine and pulmonary diseases, but instead reasoned that Dr. Sahillioglu's position as the medical director of a hospital's pulmonary laboratory implied "greater expertise" in this area of medicine. Decision and Order at 3-4; see *Director, OWCP v. Siwiec*, 894 F.2d 635,

[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).

[3] Dr. Rashid is Board-certified in Internal Medicine, Dr. R. Kraynak is Board-eligible in Family Medicine and Dr. M. Kraynak is Board-certified in Family Medicine. Director's Exhibit 13; Claimant's Exhibits 19, 25.

13 BLR 2-259 (3d Cir. 1990); *Bolyard v. Peabody Coal Co.,* 6 BLR 1-767 (1984); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983); Director's Exhibit 21. 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. Rashid, 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 4; Director's Exhibit 12. In addition, the administrative law judge reasonably determined that the medical opinion of Dr. Rashid, that claimant did not have a totally disabling respiratory impairment, was entitled to the greatest weight since he possessed superior qualifications to Dr. R. Kraynak as well as Dr. M. Kraynak. *Clark*, *supra*; *Fields*, *supra*; *Fuller*, *supra*; Decision and Order at 4. Furthermore, the administrative law judge found that the opinions of Drs. R. Kraynak and M. Kraynak regarding total disability were based on their reliance on discredited pulmonary function studies and conflicting physical findings *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 4. 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). Moreover, since the administrative law judge rationally 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 and we need not address claimant's other arguments on appeal.[4] *Anderson*, *supra*; *Trent*, *supra*.

[4] Inasmuch as claimant has failed to establish he is totally disabled, we need not address claimant's contention that the administrative law judge erred in failing to make a specific finding with respect to the length of coal mine employment and in failing to find the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge