

BRB No. 98-1542 BLA

LARRY D. SCOTT)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED:
CORPORATION)	
)	
Respondent)	
)	
and)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Larry D. Scott, Charleston, West Virginia, *pro se*.

Cathryn Celeste Helm (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, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (97 - BLA-585) of Administrative Law Judge Clement J. Kennington 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 found at

least three years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 4. The administrative law judge concluded that the evidence of record was 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 has not responded. The Director, Office of Workers' Compensation Programs, has 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 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).

After consideration of the administrative law judge's Decision and Order 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 permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *See Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) as all of the x-rays of record were read negative for the existence of pneumoconiosis. Director's Exhibits 13, 14, 36, 43; Employer's Exhibits 4; Decision and Order at 10; 20 C.F.R. §§718.102, 718.202. In addition, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2) and (3) as there is no 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. 20 C.F.R. §§718.304, 718.305, 718.306; Decision and Order at 10; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Further, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly accorded greater weight to the opinions of Drs. Dahhan and Fino, finding no pneumoconiosis, than to the contrary opinion of Dr. Walker, as better documented, reasoned,

and supported by the objective evidence of record. The administrative law judge also permissibly credited the opinions of Drs. Dahhan and Fino as they were supported by the opinions of Drs. Gogineni, Binns and Abramowitz. Director's Exhibits 11, 37; Employer's Exhibit 2-4; Decision and Order at 11; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Hall v. Director, OWCP*, 8 BLR 1-193 (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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *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 pneumoconiosis pursuant to Section 718.202(a)(1)-(4) as it is supported by substantial evidence and in accordance with law. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement is precluded. *Trent, 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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge