

BRB No. 97-1357 BLA

HALLIE WILLIAMS)
(Widow of JACK WILLIAMS))
)
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 on Remand of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

William D. Gregory, Mt. Vernon, Kentucky, for claimant.

Jennifer U. Toth (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, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order on Remand (94-BLA-0263) of Administrative Law Judge Robert L. Hillyard 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 duplicate living miner's claim is before the Board for the third time. In his original Decision and Order, the administrative law judge credited the miner with eleven years of coal mine employment and adjudicated the miner's claim and the survivor's claim

pursuant to 20 C.F.R. Part 718.¹ The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis or death due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.205. Accordingly, benefits were denied on both claims. In his most recent Decision and Order on remand, the administrative law judge credited the miner with eleven and three-quarters years of coal mine employment and found that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) or total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal herein, claimant contends that the administrative law judge erred in his length of coal mine employment determination and asserts that the evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable 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 pursuant to 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 on Remand, 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 that there is no reversible error contained therein. The administrative law judge, in the instant case, determined that claimant established eleven and three-quarters years of qualifying coal mine employment. The administrative law judge found claimant's testimony and employment history forms to

¹ The miner originally filed for benefits in 1974 and the claim was finally denied in 1987. The miner filed his second claim for benefits on January 23, 1989. Director's Exhibit 11. Only the instant duplicate miner's claim is being pursued by claimant.

be somewhat vague as to dates of employment, and thus, properly relied on Social Security Administration earning records and W-2 tax forms to supplement testimony in determining the length of coal mine employment. Decision and Order on Remand at 2-3; *Mullins v. Director, OWCP*, 6 BLR 1-508 (1983); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986). Further, it is within the administrative law judge's discretion as the trier-of-fact to make credibility determinations with respect to the testimony and documentary evidence of record concerning the miner's employment history. *Wenanski v. Director, OWCP*, 8 BLR 1-487 (1986); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). Since the administrative law judge's computation of time spent in coal mine employment will be upheld where it is based on a reasonable method of calculation and is supported by substantial evidence in the record considered as a whole, his finding of eleven and three-quarter years of coal mine employment is affirmed. *Kephart v. Director, OWCP*, 8 BLR 1-185 (1985).

With respect to the merits of the claim, the administrative law judge rationally determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge considered the entirety of the medical opinion evidence of record and permissibly accorded greater weight to the opinion of Dr. Jarboe as it was the most thorough and well reasoned and supported by Dr. Broudy's opinion. *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order on Remand at 6-7. Additionally, the administrative law judge acted within his discretion as trier-of-fact in according less weight to the opinion of Dr. Baker, diagnosing bronchitis due to smoking and coal dust exposure, as Dr. Baker relied on an inflated coal mine employment history and an imprecise smoking history. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Hunt v. Director, OWCP*, 7 BLR 1-709 (1985); Decision and Order on Remand at 7. 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). 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)(4) and, thus, a material change in conditions pursuant to Section 725.309(d), as it is supported by substantial evidence and is in accordance with law.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge