

BRB No. 97-1461 BLA

HERBERT E. NEWBERRY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
J & L COAL, INCORPORATED)	DATE ISSUED:
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Herbert Newberry, Doran, Virginia, *pro se*.

Lawrence C. Renbaum (Arter & Hadden), Washington, D. C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,¹ appeals the Decision and Order (96-BLA-0573) of Administrative Law Judge Pamela Lakes Wood 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). Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.² The

¹ Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant but is not representing him on appeal. See *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

² Claimant filed his first claim for benefits on March 18, 1993, which was

administrative law judge concluded that the evidence of record was sufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a)(1) and 718.204(c)(2) and (4), but insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would 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 are in accordance with law. 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 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, 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, rationally determined that the evidence of record was insufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). As none of the physicians of record found that claimant was totally disabled due to pneumoconiosis, Director's Exhibits 9, 10, 34, 40, the administrative law judge properly concluded that the evidence was insufficient to establish that claimant was totally disabled due to pneumoconiosis. Decision and Order at 16; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). The

withdrawn on February 24, 1994. Director's Exhibit 40. The instant claim was filed on February 21, 1995. Director's Exhibit 1.

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); *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 total disability due to pneumoconiosis pursuant to Section 718.204(b) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as claimant has failed to establish total disability due pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded and we need not address employer's contentions raised in his response brief. *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

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge