

BRB No. 03-0219 BLA

JOHN GLASSIC)
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED: 11/14/2003
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order On Remand of Ralph A. Romano,
Administrative Law Judge, United States Department of Labor.

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

Sarah M. Hurley (Howard M. Radzely, Acting Solicitor of Labor; Donald
S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate
Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, HALL and
GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (1998-BLA-00162) of
Administrative Law Judge Ralph A. Romano 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).¹ In its most recent decision on this case, the
Board vacated the administrative law judge's decision awarding benefits and remanded
the case to the administrative law judge to reconsider whether the opinion of Dr. Kraynak

¹ The Department of Labor has amended the regulations implementing the Federal
Coal Mine Health and Safety Act of 1969, as amended. These regulations became
effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2002).
All citations to the regulations, unless otherwise noted, refer to the amended regulations.

was adequately supported by underlying documentation, and to consider whether the evidence established total disability and disability causation, if reached. On remand, the administrative law judge found that Dr. Kraynak's opinion was reasoned, notwithstanding his reliance on inconclusive pulmonary function study evidence, and found, having reviewed all the relevant evidence, that claimant established total disability. The administrative law judge found, however, that claimant failed to establish disability causation. Accordingly benefits were denied.

On appeal, claimant argues that the administrative law judge's Decision and Order does not comply with the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), that the record does not support the administrative law judge's finding that claimant's disability was due to a cardiac problem, and that the administrative law judge provided no basis for rejecting Dr. Kraynak's opinion on causation. The Director, Office of Workers' Compensation Programs, (the Director) responds, arguing that the administrative law judge erred in finding total disability established and the Director urges that the case be remanded to the administrative law judge on the issue of total disability. The Director notes that inasmuch as the evidence does not establish total disability, it cannot establish disability causation.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 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 prove 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 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*).

Claimant argues that the administrative law judge erred in relying on x-rays showing heart abnormalities to discredit Dr. Kraynak's opinion. Claimant contends that these radiographic findings are not evidence of a cardiac condition or the extent of any disability that would be present, and that the administrative law judge mischaracterized the record by relying on them to conclude that claimant's blood pressure was the cause of his disability. Instead, claimant contends that Dr. Kraynak provided a well-reasoned

² The Director's Motion to Remand is accepted as his response brief.

opinion that claimant did not have a disabling heart condition, but was disabled due to pneumoconiosis.

In addressing the evidence on causation, the administrative law judge found that there was evidence in the record showing heart abnormalities and that Dr. Green opined that claimant suffered from heart problems. The administrative law judge noted that Dr. Kraynak's opinion on causation was inadequate because he did not address how claimant's cardiac condition, the presence of which he acknowledged, affected claimant's respiratory condition. Decision and Order at 9.

The administrative law judge is empowered to weigh the medical evidence of record and draw his own inferences therefrom, *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not weigh the evidence or substitute its own inferences on appeal if the administrative law judge's findings are supported by substantial evidence, *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). In this case, the administrative law judge found that Dr. Kraynak's opinion was insufficient to establish that disability was due to pneumoconiosis because Dr. Kraynak failed to adequately address the affect of claimant's cardiac condition on his disability. This was reasonable. *See Anderson*, 12 BLR at 113; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Hall v. Director, OWCP*, 8 BLR 1-193, 1-195 (1985). Further, contrary to claimant's argument, the administrative law judge's discussion of the evidence was neither cursory nor inadequate. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). Because claimant failed to establish causation, an essential element of entitlement under 20 C.F.R. Part 718, entitlement thereunder is precluded, *see Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1, and we need not consider the Director's argument on total disability.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge