

BRB No. 98-0291 BLA

ROY L. EVANS)
)
 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 G. Mahony,
Administrative Law Judge, United States Department of Labor.

Roy L. Evans, Pecks Mill, West Virginia, *pro se*.

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, the United States Department of Labor.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order
on Remand (96-BLA-0727) of Administrative Law Judge Robert G. Mahony 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 case involves a duplicate claim and is before the Board for the fourth time.¹ On

¹ In its most recent decision in this case, the Board noted this case involves a duplicate
claim and that claimant has been credited with twenty-three and one-quarter years of coal
mine employment, and established the existence of pneumoconiosis arising out of coal mine
employment pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.203(b). The Board vacated

remand, the administrative law judge considered Dr. Ranavaya's medical opinions and determined that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). Accordingly, benefits were denied. In the instant appeal, claimant generally contends that the administrative law judge's findings are erroneous. The Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance of the decision.

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. *See Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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 of claimant 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).

the administrative law judge's denial of benefits based on the Director's concession that the Department of Labor had failed to provide claimant with a complete pulmonary examination, and remanded the case to the district director for a complete pulmonary examination and to reconsider the merits in light of this new evidence. *See Evans v. Director, OWCP*, BRB No. 94-2193 BLA (Nov. 22, 1994)(unpub.).

After consideration of the administrative law judge's Decision and Order on Remand 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. Dr. Ranavaya examined claimant on December 16, 1994. Director's Exhibit 56. After noting symptoms, medical and smoking histories, and obtaining a chest x-ray, electrocardiogram, pulmonary function and blood gas studies, Dr. Ranavaya opined that claimant suffered from pneumoconiosis and coronary artery disease due to occupational exposure for twenty-eight years, and that claimant's impairment was mild, as reflected by the pulmonary function studies.² Director's Exhibit 56. In his Medical Consultant Case Review Form, dated June 13, 1996, Dr. Ranavaya clarified his opinion regarding claimant's mild impairment. The physician stated that based on claimant's last employment as an electrician, which required mild to moderate level of exertion, the amount of pulmonary impairment claimant suffered from is not totally disabling and is compatible with residual functional capacity to engage in coal mining as an electrician or job with similar exertional demand. Director's Exhibit 68. After consideration of these statements by Dr. Ranavaya, the administrative law judge found that the opinion satisfies the Department of Labor's obligation to provide claimant with a complete pulmonary evaluation and determined that claimant is not totally disabled. Decision and Order on Remand at 2. As this finding by the administrative law judge is supported by the underlying objective evidence relied upon by the physician and the physician's familiarity with claimant's usual coal mine employment, as well as the non-qualifying objective tests in the record, we affirm the administrative law judge's finding as it is supported by substantial evidence. *See Eagle v. Armco, Inc.*, 943 F.2d 509, 15 BLR 2-201 (4th Cir. 1991); *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley of Utah, Inc.*, 12 BLR 1-111 (1989). Thus, the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c) is affirmed.³

² After considering Dr. Ranavaya's December 16, 1994 opinion, the administrative law judge found that the physician's statement about the degree of claimant's impairment failed to indicate whether such an impairment would prevent claimant from performing his previous coal mine employment. The administrative law judge therefore remanded the case to the district director to supplement the record with a more complete and specific statement from Dr. Ranavaya. Director's Exhibit 67.

³ The prior findings by Administrative Law Judge Robert S. Amery that the pulmonary function studies and blood gas studies of record were insufficient to satisfy the criteria for establishing total disability and that the record contained no evidence of cor

pulmonale were affirmed by the Board on March 14, 1991. *See Evans v. Director, OWCP*, BRB No. 89-1906 BLA (Mar. 14, 1991)(unpub.).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge