

BRB No. 98-0173 BLA

JOHN M. SANDERS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BIG MOUNTAIN COAL COMPANY)	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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Christopher D. Mullen (Shaffer & Shaffer), Madison, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (95-BLA-726) of Administrative Law Judge Rudolf L. Jansen 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, May 26, 1993, this case was adjudicated pursuant to 20 C.F.R. Part 718. After crediting claimant with twenty and nine-tenth years of coal mine employment, the administrative law judge found that claimant 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), but failed to establish total disability pursuant to 20 C.F.R. §718.204. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in determining that he is not totally disabled pursuant to 20 C.F.R.

§718.204(c)(1), (2) and (4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs has indicated that he will not participate in this appeal.¹

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 in accordance 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'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).

¹ We affirm the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a), 718.203, and 718.204(c)(3) as they are unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 denying benefits is supported by substantial evidence and contains no reversible error therein. Initially, claimant contends that the administrative law judge erred in finding that the non-qualifying pulmonary function and blood gas studies fail to establish that claimant is totally disabled pursuant to Section 718.204(c)(1) and (2).² Claimant concedes that none of the objective tests yield qualifying values, but argues that the tests nevertheless reveal that claimant's lungs are subnormal. *See* Petition for Review at 2; Director's Exhibits 10, 12; Employer's Exhibits 1, 3. Claimant contends that all three pulmonary function tests indicate a reduced FEV1/FVC ratio. However, contrary to claimant's contention, the proper inquiry at Section 718.204(c)(1) and (2) is only whether the values obtained during the testing are equal to or less than the values in the tables at Appendix B for the appropriate height and age of claimant. *See* 20 C.F.R. §718.204(c)(1) and (2). The administrative law judge cannot, in his role as fact finder, make a medical determination as to whether the FEV1/FVC ratios demonstrate an impairment in the miner's lungs.³ *See Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). Thus, we affirm the administrative law judge's findings that none of the objective tests yielded qualifying values and that claimant did not establish total disability pursuant to Section 718.204(c)(1) and (2).

² A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

³ Dr. Gaziano submitted a consulting report on September 6, 1994, based on his review of the objective tests. Dr. Gaziano opined that the tests revealed a mild ventilatory impairment but did not support the presence of a disabling pulmonary condition. Director's Exhibit 17.

Claimant also contends that the administrative law judge erred in discrediting Dr. Krantz's opinion because the objective tests were non-qualifying. We disagree. The administrative law judge accorded weight to Dr. Krantz's opinion that claimant is totally disabled from his usual coal mine employment but found that the "clearly non-qualifying results of the pulmonary function and blood gas studies belie her opinion." Decision and Order at 10. The administrative law judge however permissibly found that the opinions of Drs. Zaldivar and Gaziano, that claimant is not totally disabled, are better supported by the medical data and are thus entitled to greater weight. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Director's Exhibit 17; Employer's Exhibit 1. We reject claimant's contention that the administrative law judge should have accorded diminished weight to Dr. Gaziano's opinion because he did not examine the miner. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that while an administrative law judge may accord diminished weight to a non-examining physician's opinion, he is not required to do so.⁴ *See Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). Furthermore, contrary to claimant's contention that the administrative law judge mischaracterized Dr. Gaziano's credentials, the record indicates that the physician is board-certified in internal medicine and chest diseases. Employer's Exhibit 2. We therefore affirm the administrative law judge's decision to accord greater weight to the opinions of Drs. Zaldivar and Gaziano as he rationally relied on their superior credentials.⁵ *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). 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 of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that claimant failed to establish that he is totally disabled pursuant to Section 718.204(c).

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

SO ORDERED.

⁴ Dr. Gaziano's opinion is supported by the opinion of Dr. Zaldivar, an examining physician, who also opined that the miner can perform his usual coal mine employment. Employer's Exhibit 1.

⁵ Dr. Krantz's credentials are not in the record. Director's Exhibit 11.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge