

BRB No. 98-0259 BLA

STANLEY MORGAN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LEECO, INCORPORATED)	DATE ISSUED:
)	
and)	
)	
TRANSCO ENERGY COMPANY)	
)	
Employer/Carrier- Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-334) of Administrative Law Judge Alfred Lindeman 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). The administrative law judge found, and the parties stipulated to, seventeen and one-half years of coal mine employment. Based on the

date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 2. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis or total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). 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.

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 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 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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, in the instant case, properly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a).² *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly found the x-ray evidence of record insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) based on the preponderance of the x-rays read as negative by physicians with superior qualifications. Director's Exhibits 10, 11; Employer's

¹ Claimant filed his claim for benefits on April 15, 1996. Director's Exhibit 1.

² The administrative law judge's findings that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2) and (3) are affirmed as unchallenged on appeal. Decision and Order at 3; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-610 (1983).

Exhibits 1-4, 6-9, 11-14; Decision and Order at 5; *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

Further, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly found the evidence insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). The administrative law judge rationally found the opinions of Drs. Anderson, Baker and Bushey, diagnosing pneumoconiosis, outweighed by the preponderance of the more credible medical opinions to the contrary by Drs. Lane, Powell, Wicker, Broudy and Fino. Claimant's Exhibit 1; Employer's Exhibits 1, 3, 4, 6, 7, 10-14, 16; Director's Exhibit 8; Decision and Order at 10; *Perry, supra*. Further, contrary to claimant's contention, the administrative law judge permissibly found Dr. Wright's opinion equivocal as he diagnosed pneumoconiosis, but testified in his deposition that the nodulation was not consistent with pneumoconiosis, and could be due to heart disease. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). The 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 the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law.

Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded.³

³ As we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), we need not address the administrative law judge's findings with respect to total disability or the responsible operator issue.

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge