BRB No. 98-0280 BLA

TEDDY RATLIFF, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HOPKINS CREEK COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
UNDERWRITERS SAFETY AND CLAIMS	)	
	)	
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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Teddy Ratliff, Jr., Belcher, Kentucky, *pro se*.

Martin E. Hall (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (97-BLA-104) of Administrative Law Judge Daniel J. Roketenetz denying modification and 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, fourteen years of coal mine employment and based

on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] After considering both the prior and newly submitted evidence of record, the administrative law judge concluded that the evidence was insufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c), and thus insufficient to establish either a change in conditions or a mistake in fact pursuant to 20 C.F.R. §725.310. 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

[1] Claimant filed his initial claim for benefits on October 3, 1986, which was denied by the district director on February 3, 1987. Claimant filed his second claim on June 15, 1989, which was denied by the district director on November 28, 1989. Director's Exhibits 1, 8. The administrative law judge denied benefits on September 14, 1992, after additional evidence was admitted. Director's Exhibits 20, 39, 41. On appeal, the Board affirmed the denial of benefits on August 30, 1993, finding the evidence insufficient to establish the existence of pneumoconiosis and total disability. Director's Exhibit 53. A request for modification was filed on July 29, 1994, and denied on January 19, 1995. Director's Exhibits 54, 55. Additional evidence was submitted and on July 22, 1996, the district director again denied benefits. Director's Exhibit 57.

(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, permissibly determined that the newly submitted evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) as the preponderance of the newly submitted x-rays were read as negative by physicians with superior qualifications. Director's Exhibit 58; Employer's Exhibit 5; Decision and Order at 12; *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). In addition, the administrative law judge properly found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2) and (3) as there is no biopsy evidence of record, this is a living miner's claim filed after January 1, 1982, and there is no evidence of complicated pneumoconiosis in the record. *See* 20 C.F.R. §§718.304, 718.305, 718.306. In considering the entirety of the newly submitted medical opinion evidence of record at Section 718.202(a)(4), the administrative law judge rationally accorded greater weight to the opinion of Dr. Dahhan, that claimant does not suffer from pneumoconiosis, than to the contrary opinions of Drs. Wells, Lafferty, Puram and Mettu, since Dr. Dahhan is highly qualified, he offered the most recent opinions, the physician examined claimant twice, the opinions are documented and well reasoned, his opinion is better supported by the objective evidence of record and as the physician's conclusions are supported by the opinions of Drs. Fino, Broudy and Iosif, who are highly qualified physicians. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Director's Exhibit 58; Employer's Exhibits 1-7; Decision and Order at 14.

The administrative law judge, in the instant case, also permissibly determined that the newly submitted evidence of record was insufficient to establish total disability pursuant to Section 718.204. *Piccin, supra*. The administrative law judge properly found that total

disability was not established pursuant to Section 718.204(c)(1)-(3) as all of the pulmonary function studies and blood gas studies of record produced non-qualifying values[2] and there is no evidence of cor pulmonale with right sided congestive heart failure in the record. *See* 20 C.F.R. 718.204(c)(1)-(3); Director's Exhibit 58; Employer's Exhibit 5; Decision and Order at 14; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). Further, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Dahhan, that claimant has no disabling impairment, as he is highly qualified, the physician's opinion is better supported by the objective evidence of record, and as the opinion is supported by the opinions of Drs. Fino, Broudy and Iosif. *Clark, supra*; *Dillon, supra*; *King, supra*; Director's Exhibit 58; Employer's Exhibits 1-7; Decision and Order at 14. Additionally, the administrative law judge properly concluded that the opinions of Drs. Wells and Lafferty, that claimant should avoid further dust exposure, are insufficient to establish total disability. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83 (1988). 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 Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's findings that the newly submitted evidence of record is insufficient to establish the existence of pneumoconiosis or total disability, and thus, insufficient to establish a change in conditions. Furthermore, the administrative law judge properly reviewed the entire record and permissibly concluded that there was no mistake in fact in the prior denial. Therefore, we affirm the administrative law judge's finding that claimant failed to establish modification pursuant to 20 C.F.R. §725.310 as it is supported by substantial evidence and is in accordance with law. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994).

[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, Appendix B, C respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

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