

BRB No. 97-0597 BLA

JOSEPH A. WYDRA)
)
 Claimant-Petitioner)
)
 v.)
) DATE ISSUED:
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

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

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Jeffrey S. Goldberg (J. Davitt McAteer, Acting Solicitor of Labor; 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, United States Department of Labor.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (96-BLA-1253) 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). The administrative law judge found that the parties stipulated that claimant has five years of qualifying coal mine employment. Considering the evidence of record, the administrative law judge concluded that claimant established the existence of pneumoconiosis which arose from his coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(c), but failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant

¹Claimant is Joseph A. Wydra, the miner, who filed a claim for benefits on September, 5, 1995. Director's Exhibit 1.

contends that the administrative law judge erred in failing to find total respiratory disability established pursuant to Section 718.204(c)(1), (4). The Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance.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 into the Act 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 pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*. Additionally, all elements of entitlement must be established by a preponderance of the evidence. See *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

²We affirm the administrative law judge's findings regarding the length of claimant's coal mine employment and pursuant to 20 C.F.R. §§718.202(a), 718.203(c) and 718.204(c)(2), (3) as 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 on 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. Claimant initially contends that the administrative law judge erred in weighing the qualifying pulmonary function study evidence of record pursuant to Section 718.204(c)(1). Claimant's Brief at 2-3. The record contains two qualifying pulmonary function studies, dated June 6, 1995 and September 26, 1995, and two non-qualifying pulmonary function studies, dated November 9, 1995 and August 26, 1996.³ Director's Exhibits 6, 8. In a report dated October 25, 1995, Dr. Michos invalidated the two qualifying studies. Director's Exhibit 9. The September 1995 study was also invalidated by Dr. Ahluwalia, the administering physician. Director's Exhibit 8. The administrative law judge rationally credited Dr. Michos' invalidation of the two qualifying studies on the basis of his superior qualifications. Decision and Order at 10-13; *Parulis v. Director, OWCP*, 15 BLR 1-28 (1991); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c)(1).

Claimant further contends that the administrative law judge erred in weighing Dr. Kraynak's opinion pursuant to Section 718.204(c)(4). Claimant's Brief at 3. Dr. Kraynak, in an opinion dated September 13, 1996, performed a physical examination, reviewed a positive x-ray interpretation and a qualifying pulmonary function study, and opined that claimant is totally disabled due to pneumoconiosis. Claimant's Exhibit 2. In a deposition dated November 22, 1996, Dr. Kraynak stated that he reviewed several x-ray interpretations, two non-qualifying blood gas studies, the four pulmonary function studies of record, and the medical reports of Drs. Ahluwalia and Green, which state that claimant does not have total respiratory disability, and again opined that claimant is totally disabled due to pneumoconiosis. Claimant's Exhibit 5.

³A "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).

The administrative law judge acted within his discretion in finding that Dr. Kraynak's opinion is not well reasoned because it is based upon non-qualifying and invalid objective data. Decision and Order at 15-16; *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Lafferty, supra*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The remaining physicians of record, Drs. Ahluwalia, Ranavaya, and Green, were all of the opinion that claimant does not have total respiratory disability. Director's Exhibit 12, 13, 36. Upon considering this evidence, the administrative law judge rationally concluded that the preponderance of the medical opinion evidence does not establish total respiratory disability pursuant to Section 718.204(c)(4).⁴ Decision and Order at 17; *Lafferty, supra*; *Perry, supra*. The administrative law judge is empowered to weigh the 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, supra*. Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c) as it is supported by substantial evidence and in accordance with law. Further, because claimant has failed to establish total respiratory disability, an essential element of entitlement pursuant to 20 C.F.R. Part 718, we affirm the denial of benefits. See *Anderson, supra*; *Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

⁴Claimant also contends that the administrative law judge erred in relying on the opinions of Drs. Ahluwalia, Ranavaya and Green pursuant to 20 C.F.R. §718.204(c)(4) because none of these physicians diagnosed pneumoconiosis. Claimant's Brief at 3-4. We reject this contention because the physicians' failure to diagnose pneumoconiosis would affect the credibility of their findings regarding the causation of claimant's respiratory impairment but not their opinions as to whether or not claimant has total respiratory disability.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge