BRB No. 97-1573 BLA

JOHN C. WARD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE 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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Ronald K. Bruce, Greenville, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1597) of Administrative Law Judge Thomas F. Phalen, Jr. 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 seventeen years of coal mine employment and based on the date of filing,

adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] The administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). 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'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 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] Claimant filed his claim for benefits on September 27, 1995. Director's Exhibit 1.

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, considered the entirety of the medical opinion evidence of record and rationally found the evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).[2] *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly accorded greater weight to the opinions of Drs. Selby, Branscomb and Fino, finding no pneumoconiosis, than to the opinions of Drs. Baker and Simpao, diagnosing pneumoconiosis, based on the physician's superior credentials and as their opinions were better reasoned, documented, and supported by the objective evidence. Director's Exhibits 9, 10; Claimant's Exhibit 1; Employer's Exhibits 1, 4, 5; Decision and Order at 8; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-26 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Moreover, contrary to claimant's contention, the administrative law judge is not required to accord more weight to an examining physician's opinion. *Clark, supra*; *King v. Cannelton Industries, Inc.*, 8 BLR 1-146 (1985); *Wetzel, supra*. Further, the administrative law judge permissibly relied upon the opinions of Drs. Branscomb and Fino as claimant has failed to establish that these opinions would have been different if they had considered Dr. Baker's subsequent report. *Shelosky v. Consolidation Coal Co.*, 8 BLR 1-303 (1985); *York v. Director, OWCP*, 7 BLR 1-641 (1985); *Coleman v. Kentland Elkhorn Coal Co.*, 5 BLR 1-260 (1982). 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, supra*; *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. *Trent, supra*; *Perry, supra*.

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[2] As the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(3) are unchallenged on appeal, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-610 (1983).

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

REGINA C. McGRANERY
Administrative Appeals Judge