

BRB No. 97-1692 BLA

DONALD E. STROBIETTO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
MISSOURI MINING COMPANY)	
)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	DECISION and ORDER
Party-in-Interest)	

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Russell C. Still, Columbia, Missouri, for claimant.

Bonnie Hoskins (Stoll, Keenon & Park, LLP), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-0231) of Administrative Law Judge Jeffrey Tureck 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 noted that claimant worked as a coal miner for fifteen to sixteen years,¹ but found that the

¹ Claimant alleged sixteen years of coal mine employment, but employer was

medical evidence of record failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge failed to consider fully one of the medical opinions pursuant to Section 718.202(a)(4). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.²

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 into the Act by 30 U.S.C. § 932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Section 718.202(a)(4) provides for a determination of the existence of pneumoconiosis based upon a physician's reasoned medical opinion. 20 C.F.R. §718.202(a)(4). The record contains the opinions of two physicians.

Dr. Surapaneni examined and tested claimant and diagnosed chronic

willing to stipulate to only fifteen years. The administrative law judge deemed the difference to be insignificant and indicated that he would not resolve it. Decision and Order at 2.

² We affirm as unchallenged on appeal the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(3). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

obstructive pulmonary disease due to cigarette smoking and coal dust exposure, and pulmonary fibrosis due to coal dust exposure. Director's Exhibit 8. Dr. Surapaneni was later deposed and testified that part of claimant's chronic pulmonary disease was due to coal dust exposure. Claimant's Exhibit 1. He opined that claimant has both bullous emphysema due to smoking and pneumoconiosis. Claimant's Exhibit 1 at 18-21. The record does not indicate whether Dr. Surapaneni is Board-certified in any medical speciality.

Dr. Fino, who the record indicates is Board-certified in Internal and Pulmonary Medicine, reviewed claimant's medical records, x-rays, test results, and Dr. Surapaneni's examination report. Employer's Exhibit 3. Dr. Fino diagnosed bullous emphysema due solely to smoking and indicated that coal dust exposure does not cause bullous emphysema. Dr. Fino opined that claimant's respiratory impairment was "unrelated to coal mine dust exposure," and concluded that claimant has no occupationally acquired pulmonary disease. Employer's Exhibit 3 at 9.

The administrative law judge first noted that claimant's hearing testimony and medical records indicated a "significant" smoking history.³ Decision and Order at 2. The administrative law judge then discussed the two physicians' opinions and accorded greater weight to Dr. Fino's diagnosis of emphysema due to smoking based upon his superior credentials and because he had the opportunity to review all of claimant's medical records. Decision and Order at 3. The administrative law judge concluded that "the more credible evidence does not support a finding of pneumoconiosis. . . ." *Id.*

Claimant contends that the administrative law judge "ignored Dr. Surapaneni's testimony that [claimant] suffered from both" emphysema due to smoking and pneumoconiosis. Claimant's Brief at 6. Claimant asserts that "[t]he only logical conclusion . . . is that [claimant] suffered from both conditions. . . ." *Id.*

When considering the medical opinions pursuant to Section 718.202(a)(4), the administrative law judge is not bound to accept the opinion of any medical expert, but may weigh the medical evidence and draw his or her own inferences. See *Lafferty v. Cannelton Industries, Inc.* 12 BLR 1-190, 1-192 (1989); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). The administrative law judge may assign

³ The administrative law judge noted claimant's testimony of a pack to a pack-and-a-half of cigarettes per day for thirty-seven years, and Dr. Surapaneni's notation of three packs per day for thirty years. Hearing Transcript at 39; Director's Exhibit 8 at 2. Claimant does not challenge on appeal the administrative law judge's conclusion that claimant's smoking history was significant.

more weight to a physician's medical opinion based upon his or her superior medical qualifications, see *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-154 (1989)(*en banc*), and may consider how complete a picture of the miner's health was available to a physician. See *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986).

Contrary to claimant's contention, the administrative law judge recognized that “Dr. Surapaneni diagnosed pneumoconiosis,” and cited the testimony that claimant asserts was ignored. Decision and Order at 3; Claimant's Exhibit 1 at 18-21. Although Dr. Surapaneni testified that a portion of claimant's lung disease was pneumoconiosis, Dr. Fino by contrast detected no “occupationally acquired pulmonary condition,” and specified that claimant's lung disease was “unrelated to coal mine dust inhalation.” Employer's Exhibit 3 at 9. The administrative law judge permissibly credited Dr. Fino's opinion based upon his superior credentials and his opportunity to review a broad range of medical information. See *Clark, supra*; *Stark, supra*. Substantial evidence supports the administrative law judge's decision to credit Dr. Fino's opinion that claimant's lung disease results from his smoking history and not his exposure to coal dust, see 20 C.F.R. §718.201; *Robinson v. Missouri Mining Co.*, 955 F.2d 1181, 1184, 16 BLR 2-27, 2-32 (8th Cir. 1992), and the Board is not empowered to reweigh the evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Therefore, we affirm the administrative law judge's finding pursuant to Section 718.202(a)(4).

Because claimant has failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a necessary element of entitlement under Part 718, we affirm the denial of benefits. See *Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge