BRB No. 97-1693 BLA

DELBERT E. WAUGH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
RESOURCE COAL ENERGIES, INC.	)	DATE ISSUED:
	)	
and	)	
	)	
WEST VIRGINIACOAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
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 L. Leland, Administrative Law Judge, United States Department of Labor.

G. Todd Houck, Mullens, West Virginia, for claimant.

Stephen E. Crist (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (95-BLA-468) of Administrative Law Judge Daniel L. Leland awarding 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 credited claimant[1] with twenty-five years of coal mine employment. Considering entitlement pursuant to the provisions of 20 C.F.R. Part 718, the administrative law judge concluded that claimant established the existence of pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.202(a)(1), 718.203(b). The administrative law judge further found that the record evidence was also sufficient to establish that claimant suffered from a totally disabling respiratory impairment and that claimant's total disability was due to his pneumoconiosis. 20 C.F.R. §718.204(b), (c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding that claimant's totally disabling respiratory impairment was due to pneumoconiosis as he erred in discrediting the opinions of Drs. Fino, Gaziano, and Hippensteel pursuant to Section 718.204(b). Claimant responds asserting that the administrative law judge's decision is supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond 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 applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls*

[1] Claimant is the miner, Delbert E. Waugh, who filed for benefits on May 5, 1994, which application was denied by the district director on October 5, 1994 and referred to the Office of Administrative Law Judges on December 15, 1994 for a hearing. Director's Exhibits 1, 20, 30.

[2] We affirm the administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §§718.202(a), 718.203, and 718.204(c) as they are supported by substantial evidence, and are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Associates, Inc., 380 U.S. 359 (1965).

To be entitled to benefits under Part 718, claimant must establish total respiratory disability due to pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to prove any one of these elements precludes entitlement. *Trent, supra; Perry, supra*.

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 awarding benefits is supported by substantial evidence and contains no reversible error therein. The administrative law judge rationally found that claimant established that his total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge considered all the relevant medical opinions of record and permissibly accorded greater weight to the opinions of Drs. Ranavaya and Rasmussen, that claimant's pneumoconiosis contributed to his total respiratory disability, as they were well reasoned and based on recent examinations. Decision and Order at 7; *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 18 BLR 2-16 (4th Cir. 1993); *King v. Consolidation Coal Co.*, 8 BLR 1-167 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Perry, supra*.

Contrary to employer's contention, the administrative law judge accorded little weight to the opinions of Drs. Fino, Gaziano and Hippensteel on the basis that they did not find the presence of pneumoconiosis or any coal dust related pulmonary impairment.[3] *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). Furthermore, the administrative law judge accorded diminished weight to the opinions of Drs. Fino and Hippensteel because neither physician examined the miner, they based their opinions on reviews of only a portion of the medical evidence, and were not fully aware of the exertional requirements of claimant's usual coal mine employment. Decision and Order at 6. The administrative law judge also found that Dr. Gaziano's opinion, that claimant's pulmonary impairment is non-occupational, is unsupported by any underlying rationale. *Id*. These findings by the administrative law judge were permissibly made within his discretion as fact-finder,

[3] We note that contrary to employer's contention, Drs. Fino, Hippensteel and Gaziano did state that claimant does not suffer from "legal" pneumoconiosis as they concluded that claimant does not have a pulmonary condition arising from coal dust exposure. *See* 20 C.F.R. §718.201; Employer's Exhibits 1, 2; Director's Exhibit 15.

are unchallenged by employer, and are therefore affirmed. *See Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Moreover, employer's contention that the administrative law judge incorrectly found that Dr. Rasmussen is board-certified in internal medicine is without merit as the record indicates that Dr. Rasmussen is so qualified. *See* Claimant's Exhibit 3. The administrative law judge, however, did not base his decision to accord weight to Dr. Rasmussen's opinion on the basis of the physician's credentials and therefore we affirm the administrative law judge's weighing of Dr. Rasmussen's opinion. 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 of Utah, Inc.*, 12 BLR 1-111 (1989). As the administrative law judge properly considered the evidence pursuant to Section 718.204(b), we affirm his findings on this issue.

Accordingly, we affirm the administrative law judge's Decision and Order awarding benefits.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge