

BRB No. 05-0597 BLA

NORMAN SHOFFLER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 01/23/2006
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits upon Remand by the Benefits Review Board of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Jordan H. Pecile, Hazleton, Pennsylvania, for claimant.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits upon Remand by the Benefits Review Board (03-BLA-5402) of Administrative Law Judge Robert D. Kaplan rendered 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). This case is before the Board for the second time. In his original Decision and Order, the administrative law judge credited claimant with seven years and three months of qualifying coal mine employment in this 20 C.F.R. Part 718 claim filed on August 29, 2001. The administrative law judge found that the record supports the concession of the

Director, Office of Workers' Compensation Programs (the Director), of the existence of pneumoconiosis. However, he further found that claimant failed to establish either that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c) or that he suffered from a totally disabling respiratory or pulmonary impairment. Accordingly, benefits were denied.

Pursuant to claimant's 2004 appeal, the Board vacated the administrative law judge's denial of benefits and remanded the case for further consideration. *Shoffler v. Director, OWCP*, BRB No. 04-0251 BLA (Oct. 21, 2004)(unpub.). The Board vacated the administrative law judge's finding that the evidence was insufficient to establish that claimant's pneumoconiosis arose out of his coal mine employment, holding that the administrative law judge erred in determining that Dr. Kraynak relied on fourteen years of coal mine employment in rendering his diagnosis. Consequently, the Board remanded the case for the administrative law judge to reconsider Dr. Kraynak's opinion in light of an eleven-year history of coal mine employment. *Shoffler*, slip op. at 3-4. In addition, the Board held that the administrative law judge did not properly weigh the pulmonary function study evidence and, therefore, vacated his findings at Section 718.204(b)(2)(i) as well as his Section 718.204(b)(2)(iv) findings and remanded the case to the administrative law judge for reconsideration of this evidence. *Shoffler*, slip op. at 4-6.

On remand, the administrative law judge set forth the Board's instructions on remand and reconsidered the relevant evidence. Addressing Dr. Kraynak's opinion pursuant to Section 718.203(c), the administrative law judge set forth the specifics of his opinion and again found that it was based on a fourteen-year coal mine employment history and, thus, found Dr. Kraynak's opinion not credible. Therefore, he found that claimant did not establish that his pneumoconiosis arose out of his coal mine employment. Decision and Order at 3. The administrative law judge further found that the weight of the pulmonary function study evidence does not support a finding of total disability pursuant to Section 718.204(b)(2)(i). Decision and Order at 5. With regard to the medical opinion evidence, the administrative law judge found that Dr. Kraynak failed to explain his conclusions in light of the underlying documentation and, thus, his opinion was entitled to less weight than the contrary opinion of Dr. Green. Decision and Order at 7. Consequently, the administrative law judge found that the medical evidence as a whole was insufficient to establish total disability pursuant to Section 718.204(b)(2). Accordingly, benefits were denied.

In challenging the administrative law judge's denial of benefits, claimant contends that the administrative law judge erred in finding that the evidence was insufficient to establish that claimant's pneumoconiosis arose out of his coal mine employment, arguing that the administrative law judge failed to follow the Board's mandate in his weighing of Dr. Kraynak's opinion. Claimant further argues that the administrative law judge erred in finding the evidence insufficient to establish a total respiratory disability. In response,

the Director urges affirmance of the denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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 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; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.204(b)(2), the administrative law judge found that the medical evidence of record did not establish a totally disabling respiratory or pulmonary impairment. Specifically, the administrative law judge found the weight of the pulmonary function study evidence did not establish total disability pursuant to Section 718.204(b)(2)(i). Decision and Order at 4-5. The administrative law judge further found that the medical opinion evidence did not establish total disability pursuant to Section 718.204(b)(2)(iv), based on his crediting of Dr. Green's opinion that claimant does not suffer from a respiratory disability over the opinion of Dr. Kraynak, which he found not credible. Decision and Order at 7. The administrative law judge then weighed all of the relevant evidence and found that claimant failed to establish total respiratory disability. *Id.*

On appeal, claimant contends that the administrative law judge erred in finding that the weight of the pulmonary function study evidence does not support a finding of total respiratory disability. Claimant argues that the administrative law judge erred in mechanically crediting the most recent pulmonary function study as the most reliable study. This contention lacks merit.

Contrary to claimant's contention, the administrative law judge noted that the record contains three pulmonary function studies dated between October 2000 and March 2002, of which the two more recent studies produced non-qualifying results. Decision and Order at 4-5; Director's Exhibits 14, 17, 27. Considering individually the pulmonary function studies, the administrative law judge found each of the studies to be valid and noted that the two more recent studies yielded results significantly higher than the October 2000 study. *Id.* Thus, the administrative law judge, within a reasonable exercise of his discretion as trier-of-fact, found the most recent studies to be the more reliable indicators of claimant's current condition, as they produced results substantially higher

than the earlier study. Decision and Order at 5; 20 C.F.R. §718.204(b)(2)(i); *see Kowalchick v. Director, OWCP*, 893 F.2d 615, 13 BLR 2-226 (3d Cir. 1990); *Baker v. North American Coal Corp.*, 7 BLR 1-79 (1984); *see generally Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). Consequently, we affirm the administrative law judge's finding that the weight of the pulmonary function study evidence does not support a finding of total disability pursuant to Section 718.204(b)(2)(i).

Pursuant to Section 718.204(b)(2)(iv), claimant contends that the administrative law judge erred in finding that the medical opinion of Dr. Green that claimant does not suffer from a respiratory disability was credible and also in finding that Dr. Kraynak's opinion that claimant is totally disabled was not credible. Specifically, claimant contends that because Dr. Green did not diagnose the existence of pneumoconiosis, the administrative law judge erred in crediting his opinion regarding the existence of a totally disabling respiratory impairment without providing specific and persuasive reasons for crediting such opinions, citing *Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004). We disagree.

In finding the medical opinion evidence insufficient to establish total respiratory disability, the administrative law judge found that Dr. Kraynak's opinion was not credible because the physician did not adequately explain his diagnosis and because the diagnosis was not supported by its underlying documentation. Decision and Order at 6-7. In particular, the administrative law judge reasonably found that Dr. Kraynak did not reconcile his conclusion that claimant was totally disabled with the non-qualifying blood gas studies nor did he reconcile his diagnosis with the results of his more recent non-qualifying pulmonary function study, which yielded values significantly higher than his earlier study. Decision and Order at 7; Director's Exhibits 14, 15, 17. Consequently, the administrative law judge reasonably found Dr. Kraynak's opinion not credible because the physician did not adequately explain his conclusions in light of the contrary underlying documentation. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Since the administrative law judge rationally discredited the only evidence supportive of claimant's burden at Section 718.204(b)(2)(iv), we need not address claimant's remaining arguments.

The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, and the Board may not reweigh the evidence or substitute its own inferences on appeal. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). We therefore affirm the administrative law judge's finding that the weight of the medical evidence of record does not support a finding of total respiratory disability pursuant to Section 718.204(b)(2) as it is supported by substantial evidence.

In light of our affirmance of the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under Part 718. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's findings pursuant to Section 718.203(c).

Accordingly, the administrative law judge's Decision and Order Denying Benefits upon Remand by the Benefits Review Board is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge