

BRB No. 97-1454 BLA

THEODORE M. LATUSEK, JR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	DATE ISSUED:
)	
Employer-Petitioner)	
)	
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.

Sue Ann Howard, Wheeling, West Virginia, for claimant.

William S. Mattingly (Jackson & Kelly), Morgantown, West Virginia , for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (95-BLA-2096) 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, based on employer's stipulations, credited claimant with twenty-four years of coal mine employment and found that claimant suffers from pneumoconiosis arising out of coal mine employment and has a totally disabling respiratory impairment. See 20 C.F.R. §§718.202(a)(2), 718.203, 718.204(c). On the merits of this claim, based on the entirety of the medical evidence, the administrative law judge found the evidence sufficient to establish total respiratory disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Accordingly, benefits were awarded. On appeal, employer contends

that the administrative law judge erred in finding causation established at Section 718.204(b). Claimant responds, urging affirmance of the award of benefits. Employer filed a reply brief. The Director, Office of Workers' Compensation Programs, has not submitted a brief.

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 into the Act 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 pursuant to 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).

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 of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Employer's contention that the administrative law judge erred in finding that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b) is without merit. The administrative law judge credited the opinion of Dr. Jennings and found that her opinion, supported by the opinion of Dr. Rose, was sufficient to establish that the miner's pulmonary impairment was totally disabling and that the miner's coal mine employment significantly contributed to the total disability. See 20 C.F.R. §718.204(b); *Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990); *Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990); Decision and Order at 8-10. In so finding, the administrative law judge reasonably relied on the opinion of Dr. Jennings, who believed that claimant had simple coal workers' pneumoconiosis as well as interstitial pulmonary fibrosis and opined that claimant's coal mine employment contributed to his respiratory disability. The administrative law judge credited Dr. Jennings' opinion over the opinions of Drs. Renn, Morgan, Fino, Spagnolo, Kleinerman and Naeye, based on Dr. Jennings' superior expertise, knowledge and experience regarding interstitial pulmonary fibrosis. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983); Decision and Order at 9. The United States Court of Appeals for the Fourth Circuit has held that the administrative law judge evaluates

the credibility of witnesses and resolves inconsistencies in the evidence. See *Doss v. Itmann Coal Co.*, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995). Moreover, the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. See *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Contrary to employer's contention, the administrative law judge did not ignore the contrary medical opinion evidence or Dr. Carpenter's statistical report when he accorded greater weight to the opinion of Dr. Jennings. He credited her opinion after considering all of the contrary evidence and concluding that, in addition to her expertise, her opinion along with Dr. Rose's opinion, were supported by medical journal articles published by Drs. Honma, Iwai and Monso. Decision and Order at 9-10. Thus, the administrative law judge's findings at Section 718.204(b) are not inherently incredible or patently unreasonable, see *Tackett v. Cargo v. Mining Co.*, 12 BLR 1-11 (1988), and the administrative law judge properly found causation established pursuant to Section 718.204(b) in accordance with the holdings in *Hobbs, supra*; *Robinson, supra* and *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990), *rev'd on other grds.*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995). We therefore affirm the administrative law judge's finding that claimant established that the miner was totally disabled due to pneumoconiosis pursuant to Section 718.204(b) and affirm the award of benefits pursuant to 20 C.F.R. Part 718. See *Trent, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY

Administrative Appeals Judge