

BRB No. 97-1559 BLA

DOMINIC M. HOATS )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 DIRECTOR, OFFICE OF WORKERS' ) DATE ISSUED:  
 )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Joseph R. Baranko, Jr. and James R. Scallion (Mylotte, David & Fitzpatrick), Hazelton, Pennsylvania.

Helen H. Cox (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1875) of Administrative Law Judge Paul H. Teitler 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). Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> The

---

<sup>1</sup> Claimant filed his claim for benefits on December 13, 1995. Director's Exhibit 1.

parties stipulated to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order at 3. The administrative law judge determined that claimant established one year of qualifying coal mine employment and concluded that the evidence of record was sufficient to establish that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203, and to establish total disability pursuant to 20 C.F.R. §718.204(c). Decision and Order at 4, 5, 8-10. The administrative law judge found, however, that the evidence was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Decision and Order at 10. Accordingly, benefits were denied. On appeal, claimant contends that the evidence of record is sufficient to establish that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the denial of benefits.<sup>2</sup>

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'Keefe 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 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 precluded entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

---

<sup>2</sup> The administrative law judge's length of coal mine employment determination and his findings that claimant established the existence of pneumoconiosis arising out of coal mine employment and total respiratory disability are not challenged on appeal and, therefore, are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 that claimant's 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 permissibly accorded greater weight to Dr. Ahluwalia's opinion, that claimant's impairment was due to cardiac disease, as the physician's opinion was better supported by the objective evidence of record. Claimant's Exhibit 2; Decision and Order at 10; *Dillon v. Peabody Coal Co.*, 11 BLR 1-26 (1988); *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 was not required to accord greater weight to the opinion of claimant's treating physician, Dr. Mathur, particularly when he relied on an inaccurate smoking and questionable coal mine employment history.<sup>3</sup> Director's Exhibit 20; Claimant's Exhibit 1; *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-211 (6th Cir. 1995); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish that the miner's total disability is due to

---

<sup>3</sup> Dr. Mathur relied on a smoking history of one pack of cigarettes per day for eight years and claimant testified to an actual smoking history of one to one-half packs of cigarettes per day for twenty-eight years. Decision and Order at 10; Claimant's Exhibit 2; Hearing Transcript at 37. The administrative law judge further noted that he found only one year of qualifying coal mine employment and it was unclear how many years that Dr. Mathur relied on. Decision and Order at 10; Claimant's Exhibit 2.

pneumoconiosis pursuant to Section 718.204(b) as it is supported by substantial evidence and is in accordance with law. *Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989).

Inasmuch as claimant has failed to establish that his total disability is due to pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement thereunder is precluded. *Trent, supra; Perry, supra.*

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