

BRB No. 99-0214 BLA

EDDIE CAUSEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HARLAN CUMBERLAND COAL	)	DATE ISSUED:
COMPANY	)	
	)	
and	)	
	)	
SECURITY INSURANCE COMPANY	)	
OF HARTFORD	)	
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas F. Phalen, Jr.,  
Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard,  
Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-BLA-0717) of  
Administrative Law Judge Thomas F. Phalen, Jr., 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 found, and the parties stipulated to, at  
least thirteen years of coal mine employment and based on the date of filing, adjudicated the

claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> Decision and Order at 4. The administrative law judge concluded that the evidence of record was insufficient to establish the existence of totally disabling pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. Part 718. Accordingly, benefits were denied. On appeal, claimant contends that the evidence of record is sufficient to establish the existence of totally disabling pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. Part 718. The Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.

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'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. 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)(*en banc*).

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<sup>1</sup> Claimant filed his claim for benefits on May 8, 1997.

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, in the instant case, permissibly determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a).<sup>2</sup> See *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge rationally found that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) based on the preponderance of negative x-ray readings by physicians with superior qualifications. Director's Exhibits 11-17, 30, 31; Decision and Order at 8; *Staton v. Norfolk and Western Railway Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Further, the administrative law judge considered the entirety of the medical opinion evidence of record and permissibly found that the claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). The administrative law judge properly found, contrary to claimant's argument, that the opinions of Drs. Powell and Broudy, finding no coal workers' pneumoconiosis, were well-reasoned and well-documented. Director's Exhibits 30, 31; Decision and Order at 5-6, 9; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Likewise, the administrative law judge found that Dr. Baker's diagnosis of bronchitis due to coal dust exposure and smoking met the legal definition of pneumoconiosis and was equally well-documented and well-reasoned. Director's Exhibit 9. Accordingly, the administrative law judge permissibly found that claimant failed to carry his burden of establishing the existence of pneumoconiosis. Decision and Order at 9; *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Perry, supra*; *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). 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 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 the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence and is in accordance with law. Inasmuch as claimant has failed to establish the existence of pneumoconiosis, a requisite element of entitlement pursuant to Part 718, entitlement is

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<sup>2</sup> The administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2) and (3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

precluded.<sup>3</sup>

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<sup>3</sup> As we affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a), we need not address claimant's contentions pursuant to Section 718.204(c). *Trent, supra; Perry, supra.*

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge