BRB No. 96-0486 BLA

JOE L. SPARKS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
CLINCHFIELD COAL COMPANY	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Eric Feirtag, Administrative Law Judge, United States Department of Labor.

Joe Sparks, Cedar Bluff, Virginia, *pro se.*

Timothy W. Gresham (Penn, Stuart, Eskridge, & Jones), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant[1], without the assistance of counsel[2], appeals the Decision and Order

[1]Claimant is Joe L. Sparks, the miner, whose initial claim for benefits was filed on May 6, 1981 and denied on February 9, 1988. Director's Exhibit 38. Claimant filed the present claim on January 6, 1993. Director's Exhibit 1.

[2]Tim White, a benefits counselor with Stone Mountain Health Services of Oakwood, Virginia, filed an appeal on behalf of claimant but is not representing him on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

(94-BLA-692) of Administrative Law Judge Eric Feirtag 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). This claim is a duplicate claim. The administrative law judge noted that it is undisputed that claimant has pneumoconiosis, found that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c) and the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and that the claim must be denied pursuant to 20 C.F.R. §725.309. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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 pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. *See Anderson*, *supra*; *Baumgartner*, *supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, has held that in order to establish a material change in conditions pursuant to Section 725.309, claimant must prove "under all of the probative medical evidence of his condition after the prior denial, at least one of the elements previously adjudicated against him." *See Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g*, 57 F.3d 402, 19 2-223 (4th Cir. 1995). In the instant claim, because it was previously determined that claimant established the existence of pneumoconiosis, the evidence developed subsequent to the prior denial must establish that claimant is totally disabled by his pneumoconiosis. Decision and Order at 3; Decision and Order of February 9, 1988 at 2; *see Rutter, 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 administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. The administrative law judge initially considered whether claimant established total respiratory disability by establishing that he has complicated pneumoconiosis pursuant to Section 718.304. The record contains six interpretations of an x-ray dated January 27, 1994. Claimant's Exhibit 1; Employer's Exhibits 1, 8, 9. Dr. Bassali, a Board Certified radiologist and B reader, interpreted the film as showing complicated pneumoconiosis. Claimant's Exhibit 1. The administrative law judge permissibly concluded that Dr. Bassali's interpretation of the x-ray as showing complicated pneumoconiosis was outweighed by the interpretations of Drs. Aycoth, Cappiello, Scott, and Wheeler, Board Certified radiologists and B readers, and Dr. Sargent, a B reader, none of whom interpreted the film as showing complicated pneumoconiosis. Decision and Order at 3; Claimant's Exhibit 1; Employer's Exhibits 1, 8, 9; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Perry, supra*. The record also contains a medical report submitted by Dr. Agarwal on June 22, 1994 which states: "I have reviewed all the chest x-rays and the chest x-ray reports and I noticed that he has coal worker's pneumoconiosis, complicated." Claimant's Exhibit 1. The administrative law judge permissibly found that Dr. Agarwal's report is not entitled to significant weight because it is not a well reasoned or documented opinion given that it is based "entirely on unidentified x-rays and interpretations." Decision and Order at 3-4; Claimant's Exhibit 1; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Thus, we affirm the administrative law judge's finding that claimant failed to establish the existence of complicated pneumoconiosis pursuant to Section 718.304.

The record also contains the results of four newly submitted pulmonary function studies, two of which, dated January 27, 1994 and June 13, 1994, yielded qualifying results.[3] Director's Exhibit 10; Employer's Exhibits 1, 2; Claimant's Exhibit 1. Three of the studies, dated March 25, 1993, January 27, 1994, and June 13, 1994 were invalidated by reviewing physicians who opined that claimant's effort was poor. Director's Exhibits 12, 32; Employer's Exhibits 1, 3-6, 12. The administrative law judge permissibly assigned the remaining study, which yielded non-qualifying results, the greatest weight because "its accuracy has not been challenged." *See Lafferty, supra; Trent v. Director, OWCP,* 11 BLR 1-26 (1987)*; Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). Further, the administrative law judge properly found that both of the newly submitted arterial blood gas studies, dated March 25, 1993 and January 27, 1994, are non-qualifying. Director's Exhibit 15; Employer's Exhibit 1. Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory

[3]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

disability pursuant to Section 718.204(c)(1)-(2).[4]

With respect to 20 C.F.R. §718.204(c)(4), the newly submitted medical opinions of record consist of the opinions of three physicians, Drs. Forehand, Agarwal and Sutherland, all of whom opined that claimant has total respiratory disability. Director's Exhibits 11, 14, 13; Claimant's Exhibit 1. The administrative law judge permissibly assigned the opinions of Drs. Forehand and Agarwal little weight because their opinions are based upon invalidated pulmonary function studies. Decision and Order at 6; Director's Exhibit 11, 14; Claimant's Exhibit 1; *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Lafferty, supra; Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). The administrative law judge stated that Dr. Sutherland's opinion, that claimant's impairment is severe and that he has been disabled since 1987, is not clear and that it could not evidence a material change in conditions since the prior denial of benefits was issued in 1988. Decision and Order at 6-7; Director's Exhibit 13. The administrative law judge then permissibly assigned greater weight to Dr. Sargent's opinion that claimant retains the respiratory capacity to perform his last coal mine job because it is supported by valid objective testing and, therefore, is well reasoned. Decision and Order at 7; Employer's Exhibits 1, 2; *see Clark, supra; Lafferty, supra; Fields, supra; Hutchens, supra; Piccin, supra.*

The administrative law judge is empowered to weigh the 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, supra.* Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c)(4). Consequently, the administrative law judge properly determined that claimant failed to establish a material change in conditions pursuant to Section 725.309 and therefore we affirm the denial of benefits. *Rutter, supra.*

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

SO ORDERED.

[4]Additionally, we note that there is no evidence of cor pulmonale with right sided congestive heart failure in the record, and therefore total disability can not be established at 20 C.F.R. §718.204(c)(3).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge