BRB No. 96-1481 BLA

CLARENCE M. BUMGARDNER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BELLAIRE CORPORATION	)	
	)	DATE ISSUED:
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Barbara E. Holmes (Blaufeld & Schiller), Pittsburgh, Pennsylvania, for claimant.

John C. Artz (Polito & Smock), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order (95-BLA-1788) of Administrative Law Judge Michael P. Lesniak 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). The administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and, thus, a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge then found that claimant's pneumoconiosis arose from his coal mine employment pursuant to 20

[1]Claimant is Clarence M. Bumgardner, the miner, whose initial claim for benefits was filed on August 1, 1977 and denied on December 20, 1983. Director's Exhibit 27. Claimant filed the instant claim for benefits on July 5, 1994. Director's Exhibit 1.

C.F.R. §718.203(b) but concluded that claimant's pneumoconiosis did not contribute to his total respiratory impairment pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the opinions of Drs. Altmeyer and Fino pursuant to Section 718.204(b). Employer responds urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate in this appeal. [2]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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). Further, pursuant to Section 718.204(b), claimant must establish that his disability arises at least in part from his pneumoconiosis. *See Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989).

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. Claimant contends that the administrative law judge erred in crediting the opinions of Drs. Altmeyer and Fino because their opinions, that claimant's total disability is not due to pneumoconiosis, is based on a finding that claimant does not have pneumoconiosis, which is in contrast to the administrative law judge's finding that claimant established the existence of pneumoconiosis. Claimant's Brief at 4-12. Dr. Altmeyer opined that claimant's physical

[2]We affirm the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b), 718.204(c)(1), (2) and 725.309 as they are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983).

examination, chest x-ray findings, and physiological abnormalities were not consistent with coal workers' pneumoconiosis or silicosis but were consistent with a naturally occurring interstitial lung disease. Director's Exhibit 20. Dr. Fino opined that there is some non-coal related pneumoconiosis which may cause only irregular opacities, however, the presence of only irregular opacities in the absence of rounded opacities is inconsistent with the diagnosis of coal workers' pneumoconiosis. Dr. Fino concluded that claimant's disability and impairment have nothing to do with the inhalation of coal mine dust. Employer's Exhibit 1.

With respect to 20 C.F.R. §718.204(b), the administrative law judge specifically discussed the evidence and stated:

> While I will not change my finding that claimant suffers from pneumoconiosis, I find that he has failed to show that his pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment by a preponderance of the evidence. Dr. Reddy's opinion that contribution by coal worker's pneumoconiosis was felt to be about one-third of the total pulmonary impairment standing alone would certainly be sufficient contribution. . . . However, his opinion is outweighed by the opinions of Drs. Altmeyer and Fino that Claimant's lung impairment was due to interstitial lung disease such as an idiopathic pulmonary fibrosis. The presence of irregular opacities are corroborated by Dr. Cole, a Board-certified Radiologist and B-Reader. I find that is it [sic] quite possible that Claimant has pneumoconiosis as defined by the regulations, however, his pulmonary impairment is caused by a disease process unrelated to pneumoconiosis as Dr. Fino suggests.
>
> Wherefore, the above considered, I find that while the Claimant does have pneumoconiosis caused by his coal mine employment, Claimant has failed to show by the preponderance of the evidence that his pneumoconiosis contributes to his total respiratory impairment.

Decision and Order at 7-8.

The administrative law judge, within his discretion as finder-of-fact, properly considered all the relevant evidence of record and permissibly found that the preponderance of the medical opinion evidence, did not support a finding that claimant was totally disabled due to his pneumoconiosis. Decision and Order at 7-8; Director's Exhibits 4, 20; Employer's Exhibit 1; *Adams, supra; Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Piccin v. Director, OWCP,* 6 BLR 1-616 (1983). 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Anderson*, *supra.* Thus, we affirm the administrative law judge's finding that claimant failed

to establish total disability due to pneumoconiosis pursuant to Section 718.204(b) and the denial of benefits.

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

NANCY S. DOLDER
Administrative Appeals Judge