

BRB No. 99-0715 BLA

WILLIAM W. MUNCY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SMC COAL & TERMINAL COMPANY and)	DATE ISSUED:
PIER IX TERMINAL COMPANY)	
)	
Employers-Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

William W. Muncy, Warfield, Kentucky, *pro se*.

Gregory S. Feder (Arter & Hadden, LLP), Washington, D.C., for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denial of Benefits (98-BLA-366) of Administrative Law Judge Daniel J. Roketenetz 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 twenty-nine years of coal mine employment, and based on the filing date of the claim, applied the regulations found at 20 C.F.R. Part 718. The administrative law judge found that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) and failed to establish total disability at 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers'

Compensation Programs (the Director), has not participated in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable 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 under Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any one of these elements precludes entitlement. *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 20 BLR 2-360 (6th Cir. 1996); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*).

Pursuant to Section 718.204(c)(1), (2), the administrative law judge properly found that total disability was not established as the evidence of record contains two pulmonary function studies which yielded non-qualifying results,¹ Employer's Exhibit 1; Director's Exhibit 13, and two blood gas studies which also yielded non-qualifying results. Employer's Exhibit 1; Director's Exhibit 15; 20 C.F.R. §718.204(c)(1), (2); *see Schetroma v. Director, OWCP*, 18 BLR 1-19 (1993). Further, as the record contains no evidence of cor pulmonale with right sided congestive heart failure pursuant to Section 718.204(c)(3), the administrative

¹ 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, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

law judge properly found that section inapplicable. 20 C.F.R. §718.204(c)(3).²

² The administrative law judge also properly found that claimant was not entitled to the irrebuttable presumption of totally disabling pneumoconiosis at Section 718.304 as there was no evidence of complicated pneumoconiosis in the record. 20 C.F.R. §718.304; Decision and Order at 9.

Finally, the administrative law judge determined that the medical opinions of Drs. Younes and Dineen, the only opinions of record, failed to establish total disability at Section 718.204(c)(4) as they found that claimant retained the respiratory capacity to perform his usual coal mine employment. 20 C.F.R. §718.204(c)(4); *Gee, supra*; Employer's Exhibit 1; Director's Exhibit 14. Thus, as claimant failed to establish total disability at Section 718.204(c)(1)-(4), a requisite element of entitlement, we affirm the administrative law judge's denial of benefits.³ *See Ward, supra; Adams, supra; Trent, supra; Gee, supra.*

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

³ As we affirm the finding of no total disability at 20 C.F.R. §718.204(c), we need not address the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a). *See Ward, supra; Adams, supra; Trent, supra; Gee, supra.*