

BRB No. 97-1333 BLA

ANDREW J. BURKE)
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 Claimant-Petitioner)
)
 v.) DATE ISSUED: _____
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 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Donald W. Mosser, Administrative Law Judge,
United States Department of Labor.

Andrew J. Burke, Flatwoods, Kentucky, *pro se*.

Jeffrey S. Goldberg (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, DOLDER and McGRANERY,
Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (95-BLA-1695) of
Administrative Law Judge Donald W. Mosser 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). After crediting claimant with at least seven and three-quarter years of
coal mine employment, the administrative law judge found that the medical opinion evidence was
sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The
administrative law judge also found that the evidence was sufficient to establish that claimant's
pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(c). The
administrative law judge, however, found that the evidence was insufficient to establish total
disability pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied
benefits. On appeal, claimant generally contends that the administrative law judge erred in denying
benefits. The Director, Office of Workers' Compensation Programs, responds in support of the
administrative law judge's denial of benefits.

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 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 in a living miner's claim, a 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 establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

The administrative law judge properly noted that all of the pulmonary function and arterial blood gas studies of record are non-qualifying. Decision and Order at 12; Director's Exhibits 8-10, 14. We, therefore, affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) and (c)(2).

Inasmuch as there is no evidence of record indicating that claimant suffers from cor pulmonale with right sided congestive heart failure, the administrative law judge also properly found that claimant is precluded from establishing total disability pursuant to 20 C.F.R. §718.204(c)(3). Decision and Order at 12.

In his consideration of whether the medical opinion evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4), the administrative law judge properly rejected Dr. Wright's opinion of total disability, finding that it was not sufficiently reasoned because the doctor provided no support for his conclusions. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); Decision and Order at 13; Director's Exhibit 10. The administrative law judge also properly credited Dr. Fritzhand's opinion that claimant did not suffer from a totally disabling respiratory or pulmonary impairment over Dr. Harron's contrary opinion because Dr. Fritzhand's opinion was better supported by the objective evidence of record. *See Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Voytovich v. Consolidation Coal Co.*, 5 BLR 1-141 (1982); Decision and Order at 13; Director's Exhibits 11-13. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c), an essential element of entitlement,

we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent, supra.*

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge