

BRB No. 00-0457 BLA

CHARLES E. HINKLE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
SMC COAL & TERMINAL COMPANY	)	
	)	
and	)	
	)	
PIER IX TERMINAL COMPANY	)	
	)	
and	)	
	)	
ZEIGLER COAL HOLDING COMPANY	)	
	)	
Employers/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Charles E. Hinkle, Beauty, Kentucky, *pro se*.

Eillen M. O'Brien (Stoll, Keenon & Park, LLP), Lexington, Kentucky, for  
employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (99-BLA-0100) 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 credited claimant with 18.42 years of coal mine employment, and found the evidence of record insufficient to establish the existence of pneumoconiosis arising out of coal mine employment and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.203(b) and 718.204. Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. In response, employer argues that the administrative law judge's denial of benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has declined to file a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider whether the Decision and Order below is supported by substantial evidence. See *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 the applicable 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).

After consideration of the administrative law judge's findings and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and there is no reversible error contained therein. The administrative law judge properly found that none of the pulmonary function studies or arterial blood gas studies of record yielded qualifying values under Section 718.204(c)(1) and (c)(2). Decision and Order at 7; Director's Exhibits 9, 11, 13, 20. Although the administrative law judge did not make a finding at Section 718.204(c)(3), the record is devoid of any evidence regarding the existence of cor pulmonale with right sided congestive heart failure. Consequently, claimant is unable to demonstrate total disability as a matter of law under Section 718.204(c)(3). Finally, with respect to the administrative law judge's evaluation of the medical opinion

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<sup>1</sup>This claim was filed on March 12, 1997. Director's Exhibit 1.

<sup>2</sup>A "qualifying" pulmonary function study or arterial blood gas study yields values which are equal to or less than the applicable table values appearing in Appendices B and C of Part 718. See 20 C.F.R. §718.204(c)(1) and (c)(2). A non-qualifying" study yields values which exceed the requisite table values.

evidence relevant to Section 718.204(c)(4), the administrative law judge correctly noted that of the seven medical opinions of record, only the opinions of Drs. Potter and Clarke, arguably support a finding of total disability. Decision and Order at 7. The administrative law judge found the opinions of Drs. Potter and Clarke unpersuasive in view of the normal values yielded on the pulmonary function and blood gas studies. Decision and Order at 8. Drs. Potter and Clarke performed pulmonary function studies and did not explain their diagnosis of total disability despite non-qualifying pulmonary function studies. Director's Exhibits 13, 30. The administrative law judge's finding, therefore, that the opinions of Drs. Potter and Clarke are not supported by their underlying documentation is supported by substantial evidence. See *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988). Consequently, we affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c)(4).

Inasmuch as claimant has failed to establish the existence of a total respiratory disability under Section 718.204(c)(1)-(4), a requisite element of entitlement, an award of benefits is precluded under 20 C.F.R. Part 718. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Therefore, we need not address the administrative law judge's findings under Sections 718.202(a) and 718.203(b). *Endrezzi v. Bethlehem Mines Corp.* 8 BLR 1-11 (1985).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge