

U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601



BRB No. 17-0145 BLA

RONALD E. NAPIER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 07/27/2017
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry A. Temin, Administrative Law Judge, United States Department of Labor.

Ronald E. Napier, Manchester, Kentucky.

Jeffrey S. Goldberg (Nicholas C. Geale, Acting Solicitor of Labor; Maia S. Fisher, Associate Solicitor; 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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2012-BLA-05126) of Administrative Law Judge Larry A. Temin on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on November 30, 2010. Director's Exhibit 2.

Following the district director's denial of benefits, claimant requested a hearing. The employer designated as the responsible operator subsequently filed for bankruptcy. Director's Exhibit 32. After it was determined that the Director, Office of Workers' Compensation Programs (the Director), would assume liability for any benefits and would adopt the medical evidence developed by employer, this case was forwarded to the Office of Administrative Law Judges.¹ Director's Exhibits 41, 42.

At claimant's request, the administrative law judge issued a decision on the record. After crediting claimant with fifteen years and ten months of underground coal mine employment, the administrative law judge found that the evidence did not establish that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Because claimant failed to establish that he is totally disabled, the administrative law judge found that claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis provided at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4). The administrative law judge also found that claimant was not entitled to benefits under 20 C.F.R. Part 718. The administrative law judge, therefore, denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director 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 raised 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

¹ By Order dated May 4, 2015, Administrative Law Judge Larry S. Merck granted the request of the Director, Office of Workers' Compensation Programs (the Director), to dismiss the responsible operator, designate the Black Lung Disability Trust Fund as the party liable for any benefits awarded, and to admit the medical evidence previously developed by the responsible operator as evidence submitted by the Director.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability was due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305. To invoke the Section 411(c)(4) presumption, the miner must establish that he had at least fifteen years of "employment in one or more underground coal mines," or coal mine employment in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4).

findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law.³ 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).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

In considering whether the evidence established total disability, the administrative law judge correctly determined that neither the pulmonary function study evidence nor the blood gas study evidence produced qualifying results.⁴ Decision and Order at 9; Director’s Exhibits 12, 14. Thus, the administrative law judge properly found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii).⁵

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Baker and Jarboe. Dr. Baker examined claimant on January 21, 2011 and diagnosed a mild pulmonary impairment, finding that the pulmonary function study results revealed a mild obstructive defect, and that the blood gas study results were normal. He further found that claimant’s pulmonary condition alone is not disabling, but that claimant has been totally disabled by ischemic heart disease since he stopped working in 1995. Decision and Order at 7; Director’s Exhibit 12.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant’s coal mine employment was in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibit 3.

⁴ A “qualifying” pulmonary function study or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A “non-qualifying” study exceeds these values. See 20 C.F.R. §718.204(b)(2)(i), (ii).

⁵ The record contains no evidence of cor pulmonale with right-sided congestive heart failure. Thus, claimant also cannot establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii).

Dr. Jarboe examined claimant on June 16, 2011 and diagnosed a mild pulmonary impairment, based on claimant's mild airflow obstruction. He concluded that claimant is not disabled from a respiratory or pulmonary standpoint, but retains the capacity to perform coal mine employment. Decision and Order at 7-8; Director's Exhibit 14. Since neither Dr. Baker nor Dr. Jarboe opined that claimant has a totally disabling respiratory impairment, the administrative law judge permissibly concluded that the medical opinion evidence did not establish a total pulmonary or respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 9-10. As substantial evidence supports the administrative law judge's findings, we affirm his finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Consequently, we affirm the administrative law judge's finding that claimant failed to invoke the Section 411(c)(4) presumption.

Because the medical evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), a requisite element of entitlement, claimant is precluded from entitlement to benefits.⁶ *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2; Decision and Order at 10.

⁶ A review of the record reveals no evidence of complicated pneumoconiosis. Therefore, claimant cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §§718.204(b)(1), 718.304.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge