BRB No. 01-0947 BLA

JAMES R. SAINT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PITTSBURG & MIDWAY COAL MINING	)	DATE ISSUED: 05/29/2002
	)	
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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

James R. Saint, Nortonville, Kentucky, *pro se*.

Philip J. Reverman, Jr. (Boehl, Stopher & Graves), Louisville, Kentucky, for employer.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (99-BLA-1308) of Administrative Law Judge Robert L. Hillyard 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).[1] After crediting claimant with thirty-eight years

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20

and three months of coal mine employment, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. '718.202(a)(1)-(4) (2000). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. '718.204(c)(1)-(4) (2000).[2] Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers= Compensation Programs, has not filed a response brief.

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. 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*).

C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]The provision pertaining to total disability, previously set out at 20 C.F.R. '718.204(c), is now found at 20 C.F.R. '718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. '718.204(b), is now found at 20 C.F.R. '718.204(c).

In his consideration of whether the evidence was sufficient to establish total disability, the administrative law judge properly noted that all of the pulmonary function and arterial blood gas studies of record are non-qualifying.[3] Decision and Order at 8; Director's Exhibit 11; Employer=s Exhibit 3. 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) (2000). *See* 20 C.F.R. ' 718.204(b)(2)(i)-(ii). 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) (2000). Decision and Order at 8; *see* 20 C.F.R. ' 718.204(b)(2)(iii).

In his consideration of whether the medical evidence was sufficient to establish total disability pursuant to 20 C.F.R. ' 718.204(c)(4) (2000), the administrative law judge properly accorded greater weight to Dr. O=Bryan=s opinion that claimant did not suffer from a ventilatory impairment because the administrative law judge found that the doctor=s opinion was well reasoned and supported by the objective evidence.[4] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Voytovich v. Consolidation Coal Co.*, 5 BLR 1-141 (1982); Decision and Order at 7; Employer=s Exhibit 3. The administrative law judge also permissibly discredited Dr. Simpao=s opinion that claimant suffered from a totally disabling pulmonary impairment because he found that the doctor=s opinion was unreasoned.[5] *See Clark*, *supra*; *Lucostic*,

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[3]A "qualifying" pulmonary function study or arterial blood gas study yields values which are equal to or less than the applicable table values, *i.e.* Appendices B and C of Part 718. A "non-qualifying" study yields values which exceed the requisite table values.

[4]Dr. O=Bryan examined claimant on December 7, 1999. In a report dated December 7, 1999, Dr. O=Bryan opined that claimant did not suffer from any ventilatory impairment. Employer=s Exhibit 3. Dr. O=Bryan indicated that his physical examination of claimant=s lungs was normal. *Id.* Dr. O=Bryan also indicated that the results of claimant=s pulmonary function and arterial blood gas studies conducted on December 7, 1999 were normal. *Id.*

[5]Dr. Simpao examined claimant on July 14, 1998. In a report dated July 14, 1998, Dr. Simpao opined that claimant suffered from a moderate pulmonary impairment. Director=s Exhibit 11. Dr. Simpao further opined that claimant did not have the respiratory capacity to perform the work of a coal miner. *Id.*

During a deposition taken on October 19, 1999, Dr. Simpao testified that he noticed Asome forced expiratory wheeze@ during his examination, but acknowledged that claimant appeared Ato be not so short of breath.@ Employer=s Exhibit 2 at 7. Dr. Simpao further testified that claimant did not cough during his examination. *Id.* Although Dr. Simpao noted

supra; Decision and Order at 7. Inasmuch as it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish total disability pursuant to 20 C.F.R. ' 718.204(c)(4) (2000). *See* 20 C.F.R. ' 718.204(b)(2)(iv).

Since claimant failed to establish total disability pursuant to 20 C.F.R. ' 718.204(b), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718. *See Trent, supra*; *Gee, supra*; *Perry, supra*. Consequently, we need not address the administrative law judge's findings under 20 C.F.R. ' 718.202(a) (2000). *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge

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that claimant=s last coal mine job was as a Abelt operator, belt shoveler, or duster,@ he acknowledged that he was not provided with a specific description of the physical activities involved in that particular job. *Id* at 7-8.