BRB No. 97-1413 BLA

RONALD L. WHITT, SR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: _____
	)	
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 - Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Ronald L. Whitt, Sr., Norton, Virginia, *pro se.*

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order - Denying Benefits (96-BLA-1663) of Administrative Law Judge Richard A. Morgan 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 at least nineteen years of coal mine employment. Considering the merits of the claim under 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a), total disability pursuant to 20 C.F.R. §718.204(c), and total disability due to pneumoconiosis under 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

Employer responds to claimant's *pro* se appeal, and urges the Board to affirm the administrative law judge's denial of benefits. The Director, Office of Workers'

Compensation Programs, has not filed a brief in the appeal.[1]

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 administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 Part 718, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, and that he is totally disabled by the disease. 20 C.F.R. §§718.202, 718.203, 718.204; *Trent v. Director, OWCP,* 11 BLR 1-26 (1987); *Perry v. Director, OWCP,* 9 BLR 1-1 (1986)(*en banc*). Failure to establish any element of entitlement will result in the denial of benefits.

We affirm the administrative law judge's finding that the evidence of record fails to establish that claimant is totally disabled due to a respiratory or pulmonary impairment pursuant to Section 718.204(c). In the instant case, the administrative law judge properly found that all of the pulmonary function studies and blood gas studies of record produced non-qualifying values[2] and thus, claimant cannot establish total disability under Section 718.204(c)(1) or (c)(2). The administrative law judge next correctly found that there is no evidence that claimant suffers from cor pulmonale with right sided congestive heart failure

[1]We affirm the administrative law judge's findings of at least nineteen years of coal mine employment and that employer is the responsible operator as these findings are unchallenged on appeal and not adverse to claimant. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2]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).

to support a finding of total disability under Section 718.204(c)(3).

The administrative law judge next weighed the relevant medical opinions pursuant to Section 718.204(c)(4). The administrative law judge properly determined that none of the physicians of record found that claimant is totally disabled due to a pulmonary or respiratory disease, and substantial evidence supports the administrative law judge's finding. Specifically, the administrative law judge properly found that the evidence in the instant case "is replete with reports of nonrespiratory and nonpulmonary impairments, such as chronic chest pain, back injury, and psychiatric treatment. In fact, Mr. Whitt testified that he left coal mine employment because of a bad back and a nerve condition. (TR 15)." Decision and Order at 17.[3] In this regard, and citing the decision of the United States Court of Appeals for the Fourth Circuit in *Jewell Smokeless Coal Corp. v. Street*, 42 F.3d 241 (4th Cir. 1994) and the decision of the Board in *Beatty v. Danri Corp.,* 16 BLR 1-1 (1991), the administrative law judge further properly found that nonrespiratory and nonpulmonary impairments have no bearing on claimant's burden to establish total respiratory or pulmonary disability under Section 718.204(c). 20 C.F.R. §718.204(c). We, therefore, affirm the administrative law judge's determination that the record evidence is insufficient to meet claimant's burden to establish total disability at Section 718.204(c)(4). *Director, OWCP v. Greenwich Collieries [Ondecko],* 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Inasmuch as substantial evidence also supports the administrative law judge's finding that the record evidence fails to establish total disability under Section 718.204(c)(1)-(3), we affirm the administrative law judge's finding that claimant has failed to established total disability under Section 718.204(c).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish total disability under Part 718, an essential element of entitlement, we affirm the administrative law judge's denial of benefits as a finding of entitlement is precluded.[4]

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[3]Of those physicians who rendered relevant opinions, Drs. Paranthaman, J. Dale Sargent, and Fino found that claimant is not totally disabled due to a respiratory or pulmonary impairment. Director's Exhibits 10, 25, Employer's Exhibits 6, 7. Further, to the extent that psychiatrists Drs. Moffet and McNight, and Dr. Senter, found impairment or "disability" resulting from injuries which claimant sustained in a mining accident, an extrinsic factor, their opinions do not support a finding of total disability under the Act. *See Carson v. Westmoreland Coal Co.,* 19 BLR 1-16 (1994).

[4]Substantial evidence further supports the administrative law judge's finding that the evidence of record fails to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a). The record contains no positive x-ray evidence, and there is no biopsy evidence. 20 C.F.R. §718.202(a)(1), (a)(2). Claimant cannot avail himself of any of the presumptions referred to in Section 718.202(a)(3). See 20 C.F.R.

See Trent, supra; Perry, supra.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

§§718.304, 718.305, 718.306. Further, the administrative law judge properly weighed the medical opinions in finding them to be insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4).