BRB No. 97-0578 BLA

JAMES R. BREWSTER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
W.A. BENNET 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 of John C. Holmes, Administrative Law Judge, United States Department of Labor.

James R. Brewster, Bandy, Virginia, *pro se*.

Richard A. Dean (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of legal counsel,[1] appeals the Decision and Order (96-BLA-1486) of Administrative Law Judge John C. Holmes 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). The administrative law judge credited the miner with at least ten years of coal mine employment and adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or to establish total disability due to pneumoconiosis pursuant to

[1] Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. White is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

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, are supported by substantial evidence, and are in accordance with 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 in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. In considering whether total disability was established under Section 718.204(c)(1)-(2), the administrative law judge properly found that inasmuch as the credible pulmonary function study and blood gas study evidence of record was non-qualifying, total disability was not established pursuant to Section 718.204(c)(1)-(2).[2] *See* Decision and Order at 10. In addition, the administrative law judge correctly found that there is no evidence of cor pulmonale with right sided congestive heart failure, *see* 20 C.F.R. §718.204(c)(3), and establishing total disability by this method is precluded.

[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 and C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

In considering whether total disability was established by the medical opinions of record, *see* 20 C.F.R. §718.204(c)(4), the administrative law judge correctly determined that the medical reports of record failed to establish total disability since none of the physicians diagnosed claimant as suffering from a totally disabling respiratory impairment. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1291 (1984); Decision and Order at 4-6. Although the administrative law judge noted that Dr. Sutherland found a sixty to sixty-five percent impairment, the administrative law judge also noted that his pulmonary function study indicated no disability. Decision and Order at 6; Director's Exhibit 48. The administrative law judge thus implicitly concluded that the underlying documentation did not support the physician's conclusions. Consequently, the administrative law judge properly found that the medical opinions of record failed to establish total disability pursuant to Section 718.204(c)(4). *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). Thus, we affirm the administrative law judge's finding that the evidence of record was insufficient to establish total disability in accordance with the provisions of Section 718.204(c).[3] The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Claimant's failure to establish total respiratory disability pursuant to Section 718.204(c), an essential element of entitlement, precludes an award of benefits under 20 C.F.R. Part 718. *Anderson, supra*, *Trent*, *supra*. Consequently, we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and is in accordance with law.[4]

[3] As the administrative law judge properly found that the medical evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4), lay testimony alone cannot alter the administrative law judge's finding. *See* 20 C.F.R. §718.204(d)(2); *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985).

[4] As we affirm the administrative law judge's denial of benefits on the basis of the administrative law judge's findings on the merits, we need not address the duplicate claim issue. *See Lisa Lee Mines v. Director, OWCP* [Rutter], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge