

BRB No. 97-0714 BLA

JAMES P. BEGLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
J & L MINING, INC.)	
)	
and)	
)	
EMPLOYERS INSURANCE OF WAUSAU)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	Date Issued:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Otis Doan, Jr., P.S.C., Harlan, Kentucky, for claimant.

Bonnie Hoskins (Stoll, Keenon & Park, LLP), Lexington, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (96-BLA-0065) of Administrative Law Judge Robert L. Hillyard 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 found that claimant established thirteen years of coal mine employment, and based on the filing date, applied the regulations found at 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising from coal mine employment

pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but found the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, contending that the administrative law judge erred in failing to find total disability established at 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order.¹ The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational and consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On appeal, claimant contends that the administrative law judge erred in failing to find total disability at Section 718.204(c)(4). Specifically, claimant contends that total disability is established by the physicians' opinions diagnosing "category 2/2 coal workers' pneumoconiosis." We reject claimant's contention, as the existence of pneumoconiosis and total disability are two separate issues. See *Rice v. Sahara Coal Co.*, 15 BLR 1-19 (1990). Furthermore, the administrative law judge properly found that none of the physicians' opinions termed claimant as totally disabled for his usual coal mine employment. See *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'd* 9 BLR 1-104 (1986); Director's Exhibits 16, 17, 18, 19, 20, 33, 39. Moreover, a physician's opinion diagnosing 2/2 coal workers' pneumoconiosis is, by itself, insufficient to establish either complicated pneumoconiosis or total disability. See generally *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). As claimant raises no argument of merit, we affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c). See generally *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986). As claimant has failed to establish total disability, an essential element of entitlement, we affirm the denial of benefits. See *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Perry v. Director, OWCP*, 9

¹ We affirm the administrative law judge's findings of thirteen years of coal mine employment and the existence of pneumoconiosis arising from coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b) as unchallenged on appeal. Additionally, we affirm the administrative law judge's finding that claimant failed to establish total disability at 20 C.F.R. §718.204(c)(1)-(3) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

BLR 1-1 (1986)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge