



BRB No. 20-0102 BLA

MANSFORD L. BUSH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 12/21/2020
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Carrie Bland, Administrative Law Judge, United States Department of Labor.

Mansford L. Bush, Castlewood, Virginia.

Sarah M. Hurley (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: BOGGS, Chief Administrative Appeals Judge, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,<sup>1</sup> appeals Administrative Law Judge Carrie Bland's Decision and Order Denying Benefits (2017-BLA- 05708) rendered on a

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<sup>1</sup> On Claimant's behalf, Diane Jenkins, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the

subsequent claim<sup>2</sup> filed on May 11, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

Although the administrative law judge credited Claimant with 23.56 years of underground coal mine employment, she found he did not establish total disability. She therefore found he did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,<sup>3</sup> 30 U.S.C. §921(c)(4) (2018), or establish entitlement to benefits under 20 C.F.R. Part 718.<sup>4</sup> The administrative law judge therefore denied benefits.

On appeal, Claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.<sup>5</sup>

In an appeal filed without the assistance of counsel, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with

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administrative law judge's decision, but Ms. Jenkins is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

<sup>2</sup> This is Claimant's second claim for benefits. The district director denied Claimant's initial claim, filed on November 30, 1999, because he did not establish any element of entitlement. Director's Exhibit 1.

<sup>3</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

<sup>4</sup> The administrative law judge found Claimant established legal pneumoconiosis in the form of chronic bronchitis significantly related to, or substantially aggravated by, coal mine dust exposure. 20 C.F.R. §718.202(a). Thus he established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.

<sup>5</sup> Based on the Director, Office of Workers' Compensation Programs' (the Director) concession in this case, the administrative law judge dismissed Eastover Mining Company as the responsible operator. Decision and Order at 2. n.1. The Black Lung Disability Trust Fund assumed potential liability for the payment of benefits in this claim. *Id.* Because the Director declined to adopt Eastover Mining Company's medical evidence, the administrative law judge excluded Employer's Exhibits 1-5. Decision and Order at 3 n.5.

applicable law.<sup>6</sup> 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 prove entitlement, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist Claimant in establishing the elements of entitlement, but failure to establish any element precludes an award of benefits.<sup>7</sup> *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).

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff’d on recon.*, 9 BLR 1-236 (1987) (en banc).

The record contains a June 1, 2015 pulmonary function study and a June 1, 2015 arterial blood gas study. 20 C.F.R. §718.204(b)(2)(i),(ii); Director’s Exhibit 8. Neither study is qualifying.<sup>8</sup> Because it is supported by substantial evidence, we affirm the

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<sup>6</sup> Claimant’s coal mine employment occurred in Virginia. Director’s Exhibit 5; Hearing Tr. 11-12, 18-19. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

<sup>7</sup> There is no evidence of complicated pneumoconiosis in the record. 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); 20 C.F.R. §718.304.

<sup>8</sup> A “qualifying” pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A “non-qualifying” study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

administrative law judge's finding that the pulmonary function and arterial blood gas testing does not establish total disability. 20 C.F.R. §718.204(b)(2)(i),(ii); Decision and Order at 9-11.

The administrative law judge accurately found no evidence of cor pulmonale with right-sided congestive heart failure in the record. Decision and Order at 11. We therefore affirm her finding that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(iii).

The administrative law judge next considered the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11-12. Dr. Ajarrapu opined Claimant is not totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 8. As the record contains no medical opinion diagnosing Claimant with a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's finding Claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) as supported by substantial evidence. Decision and Order at 11-12.

Because Claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iv), we affirm the administrative law judge's determinations that Claimant did not invoke the Section 411(c)(4) presumption or establish entitlement under 20 C.F.R. Part 718.<sup>9</sup> See 30 U.S.C. §921(c)(4); *Trent*, 11 BLR at 1-27.

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<sup>9</sup> The administrative law judge rationally found the evidence from the "prior claim which is approximately nineteen years old is entitled to little weight as it has minimal probative value on evaluating Claimant's current pulmonary condition." Decision and Order at 9; see *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-34-35 (2004) (en banc).

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

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge