BRB No. 98-0975 BLA

LARRY D. THACKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EASTERN COAL CORPORATION	)	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 Pamela Lakes Woods, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant,[1] appeals the Decision and Order Denying Benefits (97-BLA-0234) of Administrative Law Judge Pamela Lakes Woods 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 administrative law judge concluded that the that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and was insufficient to establish total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge denied the claim.

[1] Claimant is Larry D. Thacker, the miner, who filed a living miner's claim with the Department of Labor on October 13, 1995. Director's Exhibit 1.

On appeal, claimant challenges the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) based upon the x-ray interpretation evidence of record. Claimant asserts that the administrative law judge failed to properly weigh the five positive interpretations of record. Further, claimant asserts that the administrative law judge did not provide adequate rationale for her findings. Claimant also challenges the administrative law judge's findings that the medical opinion evidence fails to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and total respiratory disability at 20 C.F.R. §718.204(c).[2] Claimant asserts that the opinions of Dr. Clarke, and Dr. King, who is claimant's treating physician are sufficient to establish both the existence of pneumoconiosis and total disability, and challenges the administrative law judge's weighing of these opinions. Employer, in response, asserts that the administrative law judge's findings that the evidence fails to establish the existence of pneumoconiosis and total respiratory disability are supported by substantial evidence, and accordingly, urges affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation has filed a letter indicating that he will not be filing a brief.

The Board's scope of review is defined by statute. 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that he is total disabled due to pneumoconiosis arising out of coal mine employment. *See* 20 C.F.R.§§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

[2] We affirm as unchallenged on appeal the administrative law judge's findings pursuant to 20 C.F.R. §718.204(c)(1)-(3). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The administrative law judge found that the medical opinions of record were insufficient to establish total disability at Section 718.204(c)(4). The administrative law judge correctly concluded that Dr. Clarke, Director's Exhibit 27, and Dr. King, whom the administrative law judge correctly found was claimant's treating physician, Director's Exhibit 27, Claimant's Exhibit 1, opined that claimant was totally disabled, while Drs. Dineen , Director's Exhibit 26, Fino, Employer's Exhibits 1, 6, and Branscomb, Employer's Exhibit 5, concluded that he was not. Decision and Order at 5-8, 12. The administrative law judge noted that Dr. Clarke's opinion was well-reasoned, supported by clinical data, and corroborated by Dr. King's opinion which was entitled to greater weight as he was claimant's treating physician, *see Tussey v. Island Creek Coal* Co., 982 F. 2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Griffith v. Director, OWCP*, 868 F. 2d 847, 12 BLR 2-185 (6th Cir. 1989); *Ondecko v. Director, OWCP*, 14 BLR 1-2 (1989). Decision and Order at 12. On the other hand she noted that the contrary opinions of Drs. Fino and Branscomb were well-reasoned and documented and that Dr. Fino was board-certified in internal medicine and pulmonary diseases while Dr. Branscomb was board-certified in internal medicine. She further noted that these opinions were supported by the opinions of Drs. Dineen and Fritzhand. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Scott v. Mason Coal Co.*, 14 BLR 1-137 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Decision and Order at 12. Thus, the administrative law judge concluded that the conflicting medical opinions were in equipoise, that the pulmonary function and blood gas study evidence was non-qualifying and that claimant had failed to sustain his burden of proof. Decision and Order at 12. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-236 (1987)(*en banc*), *aff'g* 9 BLR 1-195 (1986). As this finding is within the administrative law judge's discretion as fact-finder, and does not constitute an abuse of discretion, we affirm the administrative law judge's finding that the evidence is insufficient to establish total respiratory disability pursuant to Section 718.204(c)(4). We affirm, therefore, the administrative law judge's finding that the evidence is insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1)-(4). As this finding precludes entitlement pursuant to the Part 718 regulations, *see Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*), we thereby affirm the administrative law judge's denial of benefits.[3]

[3] We need not address claimant's contentions with respect to the existence of pneumoconiosis at Section 718.202(a), as they are rendered moot by the Board's disposition of the case. *See Gibas v. Saginaw Mining Co.*, 748 F.2d 1112, 7 BLR 2-

53 (6th Cir. 1984).

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