

BRB No. 02-0196 BLA

PAUL MARK SPURLOCK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NEW HORIZONS COAL, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
HARTFORD ACCIDENT AND INDEMNITY	)	
COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Paul Mark Spurlock, Grays Knob, Kentucky.

David L. Murphy (Clark, Ward & Cave), Louisville, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (99-BLA-0717) of Administrative Law Judge Robert L. Hillyard 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).<sup>1</sup> This is the second time that this case is before the Board. The Board previously affirmed the administrative law judge's findings of twenty-three years of coal mine employment, the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4) (2000), 718.203(b) (2000), and that the evidence is insufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304 (2000), or total disability pursuant to 20 C.F.R. §718.204(c)(1)-(3)(2000). *Spurlock v. New Horizons Coal, Inc.*, BRB No. 00-0802 BLA (May 23, 2001) (unpublished). However, the Board vacated the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4) (2000) and remanded the case for a comparison of Dr. Baker's opinion with the exertional requirements of claimant's usual coal mine employment.<sup>2</sup> On remand, the administrative law judge found Dr. Baker's medical opinion insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).<sup>3</sup> Accordingly, the

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<sup>1</sup>The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup>The Board also held that the administrative law judge permissibly discredited the opinions of Drs. Bushey, Clarke and Harrison that claimant suffers from a disabling respiratory impairment. *Spurlock v. New Horizons Coal, Inc.*, BRB No. 00-0802 BLA (May 23, 2001) (unpublished).

<sup>3</sup>The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b) while the provision pertaining to

administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has not filed a brief in response to claimant's 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. See *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *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).

After consideration of the administrative law judge's Decision and Order on Remand, the issues on appeal and the evidence of record, we conclude that the administrative law judge's denial of benefits is supported by substantial evidence and contains no reversible error. Under Section 718.204(b)(2)(iv), the administrative law judge found that claimant testified that his last job was as a continuous miner operator and that claimant classified this job as "hard". The administrative law judge further indicated that claimant described the job as "strenuous" work, requiring considerable lifting, pulling, and tugging. Decision and Order on Remand at 3; Director's Exhibit 25; Hearing Transcript at 11. The administrative law judge reasonably found that Dr. Baker's opinion, that claimant had a mild to moderate impairment, when compared with the exertional requirements of claimant's usual coal mine employment, was insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv). Decision and Order at 3; *Cornett v. Benham Coal Co.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). This determination is rational and supported by the evidence of record. *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc*). Therefore, because we previously affirmed the administrative law judge's finding that claimant failed to establish total disability at Section 718.204(b)(2)(i)-(iii), and we now affirm the finding that the medical opinions of record do not support a finding of total disability under Section 718.204(b)(2)(iv), claimant has failed to establish total disability, a requisite

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disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

element for entitlement to benefits. Consequently, claimant has not established entitlement to benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1985); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986).

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

BETTY JEAN HALL  
Administrative Appeals Judge