BRB No. 00-0364 BLA

LEONARD ADAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WHITAKER 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-Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson and Kilcullen), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-0472) of Administrative Law Judge Daniel J. Roketenetz 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). After accepting the parties' stipulation to at least sixteen years of coal mine employment, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a), 718.204(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's findings under Sections 718.202(a)(1), (a)(4) and 718.204(c)(4). In response, employer argues that the administrative law judge's denial of benefits is supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has declined to

[1]This claim was filed on February 9, 1998. Director's Exhibit 1.

file a brief in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact, and conclusions of law are supported by substantial evidence, are rational, and are 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'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 filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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 there is no reversible error contained therein. Claimant alleges that Dr. Baker's medical opinion is sufficient to establish that he suffers from a total disability under Section 718.204(c)(4). Claimant also asserts that a "single medical opinion may be sufficient for invoking the presumption of total disability," that the administrative law judge erred in not considering the exertional requirements of claimant's usual coal mine employment as a truck driver, and that because pneumoconiosis is a progressive and irreversible disease, it can be concluded that during the considerable amount of time that has passed since the initial diagnosis of pneumoconiosis "claimant's condition has worsened, thus adversely affecting his ability to perform his usual coal mine work or comparable gainful work." Claimant's Brief at 8-10. We disagree. Initially, we note that the interim presumption of total disability due to pneumoconiosis arising under 20 C.F.R. Part 727 is inapplicable to the instant claim. *See* 20 C.F.R. §727.203(a). Because this claim was filed after March 31, 1980, the administrative law judge properly applied the permanent criteria under Part 718. *See* 20 C.F.R. §§718.(1)(b) and 718.2.

Additionally, the administrative law judge permissibly found Dr. Baker's medical opinion that claimant was totally disabled not reasoned. Decision and Order at 10. The administrative law judge properly found that Dr. Baker failed to explain his diagnosis of total disability despite non-qualifying studies. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *id*; Director's Exhibit 14. Inasmuch as the administrative law judge reasonably found the medical opinion by Dr. Baker, the only medical opinion of record supportive of a finding of total disability, not persuasive, the administrative law judge was not required to compare the exertional requirements of claimant's usual coal mine employment with his condition. *See Budash v. Bethlehem Mines Corp.*, 9 BLR 1-

[2]The administrative law judge's length of coal mine employment determination as well as his findings pursuant to 20 C.F.R. §§718.202(a)(2)-(3) and 718.204(c)(1)-(3), are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

48, *aff'd on recon*, 9 BLR 1-104 (1986). Further, claimant's assertion of vocational disability based on his age and limited education and work experience, does not support a finding of total respiratory or pulmonary disability compensable under the Act. *See* 20 C.F.R. §718.204; *Carson v. Westmoreland Coal* Co., 19 BLR 1-18 (1994); *see also Ramey v. Kentland Elkhorn Coal Corp.*, 755 F.2d 485, 7 BLR 2-124 (6th Cir. 1985). The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when they are supported by substantial evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLA 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987). Consequently, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability under Section 718.204(c)(4).

Inasmuch as claimant has failed to establish total disability under Section 718.204(c)(1)-(4), a requisite element of entitlement, an award of benefits is precluded under 20 C.F.R. Part 718. *Anderson, supra; Trent, supra; Perry, supra.* Therefore, we need not address claimant's arguments under Section 718.202(a). *Endrzzi v. Bethlehem Mines Corp.*, 8 BLR 1-11 (1985).

[3]Claimant's reliance on *Bentley v. Director, OWCP*, 7 BLR 1-612 (1982), is misplaced. In *Bentley*, the Board held that age, work experience and education are only relevant to claimant's ability to perform comparable and gainful work, an issue which did not need to be reached in that case in light of the administrative law judge's finding at 20 C.F.R. §410.426(a) that claimant did not establish that he had any impairment which disabled him from his usual coal mine employment. *See also* 20 C.F.R. §718.204(b)(1), (b)(2).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge