U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0175 BLA

RICHARD DARRELL LITTLE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ICG KNOTT COUNTY, LLC	)	DATE ISSUED: 12/31/2018
	)	
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 Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Richard Darrell Little, Melvin, Kentucky.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2016-BLA-05572) of Administrative Law Judge Steven D. Bell rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on November 5, 2014.

The administrative law judge credited claimant with thirty years of underground coal mine employment based on employer's concession. The administrative law judge found, however, that claimant failed to establish total respiratory or pulmonary disability pursuant to 20 C.F.R. §718.204(b)(2), precluding invocation of the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] Because claimant did not establish total disability, an essential element of entitlement, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.[2]

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 Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86-87 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). 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 applicable law.[3] 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 establish entitlement to benefits under 20 C.F.R. Part 718, claimant must prove that he has pneumoconiosis; his pneumoconiosis arose out of coal mine employment; he has a totally disabling respiratory or pulmonary impairment; and his totally disabling impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v.*

[1] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established thirty years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[3] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

Director, OWCP, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc). A claimant can also establish entitlement to benefits with the aid of the presumptions at Section 411(c)(3) and Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(3), (4).

TOTAL DISABILITY

In the absence of contrary probative evidence, a miner's disability is established by pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. If the administrative law judge finds that total disability has been established under one or more subsections, he must weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the results of two pulmonary function studies dated January 5, 2015 and July 20, 2016.[4] Decision and Order at 6; Director's Exhibit 17; Employer's Exhibit 3. He correctly found that both of these studies produced non-qualifying[5] values. Decision and Order at 6, 10. Therefore, we affirm the administrative law judge's finding that claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i). *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); Decision and Order at 10.

Similarly, the administrative law judge correctly determined that the two arterial blood gas studies dated January 5, 2015 and July 20, 2016 produced non-qualifying values. Decision and Order at 7, 10; Director's Exhibit 17; Employer's Exhibit 3. Thus, we affirm the administrative law judge's finding that claimant did not establish total disability at 20

[4] The recorded heights for claimant on the pulmonary function studies dated January 5, 2015 and July 20, 2016 were 70.5 inches and 72 inches, respectively. Director's Exhibit 17; Employer's Exhibit 3. The administrative law judge resolved the height discrepancy recorded on these studies, finding that claimant's average reported height was 71.3 inches. *See Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 114 (4th Cir. 1995); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 6 n.42.

[5] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study yields values that exceed the requisite table values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

C.F.R. §718.204(b)(2)(ii). *See Martin*, 400 F.3d at 305, 23 BLR at 2-283; *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); Decision and Order at 10.

Similarly, as the administrative law judge correctly determined that the record does not contain evidence of cor pulmonale with right-sided congestive heart failure, we affirm his finding that total disability cannot be demonstrated pursuant to 20 C.F.R. §718.204(b)(2)(iii). *See Martin*, 400 F.3d at 305, 23 BLR at 2-283; Decision and Order at 9.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Mettu, Triplett, Rosenberg, and Castle.[6] Decision and Order at 7-10. The administrative law judge correctly found that Drs. Mettu, Rosenberg and Castle opined that claimant does not have a totally disabling respiratory impairment. Decision and Order at 10; Director's Exhibit 17; Employer's Exhibits 3, 4. He also correctly noted that Dr. Triplett did not render an opinion on whether claimant has a disabling respiratory or pulmonary impairment. Decision and Order at 10; Director's Exhibit 20. Thus, the administrative law judge properly determined that claimant did not establish that he has a totally disabling respiratory or pulmonary impairment through medical opinion evidence. *See* 20 C.F.R. §718.204(b)(2)(iv); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-123 (6th Cir. 2000)*; Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986) (en banc); Decision and Order at 10. Because this finding is supported by substantial evidence, it is affirmed. *Martin*, 400 F.3d at 305, 23 BLR at 2-283.

We further affirm, as supported by substantial evidence, the administrative law judge's finding that the evidence fails to establish total respiratory or pulmonary disability pursuant to 20 C.F.R. §718.204(b)(2). *See Shedlock*, 9 BLR at 1-198; Decision and Order at 10. As claimant has failed to establish total disability at 20 C.F.R. §718.204(b)(2), an essential element of entitlement, an award of benefits is precluded.[7] *Anderson*, 12 BLR at 1-112.

[6] The administrative law judge also considered the lay testimony and statements from claimant and his wife, but permissibly disregarded them because the record in this living miner's claim contains medical evidence that addresses claimant's pulmonary or respiratory condition. 20 C.F.R. §§718.204(d)(5), 718.305(b)(3); Decision and Order at 9.

[7] The administrative law judge correctly found that there is no evidence of complicated pneumoconiosis. Decision and Order at 5, 6, 9; Director's Exhibit 18; Employer's Exhibits 1, 2. Therefore, claimant cannot invoke the irrebuttable presumption

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

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of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §§718.204(b)(1), 718.304.