BRB No. 02-0550 BLA

IRVIN STEVENS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
IKERD BANDY COMPANY, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
ZURICH AMERICAN INSURANCE GROUP	)	
	)	
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 - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant. Bonnie Hoskins (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (01-BLA-0750) of Administrative Law Judge Robert L. Hillyard on a claim[1] 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.

[1] Claimant, Irvin Stevens, filed his application for benefits on July 17, 2000. Director's Exhibit 1.

§901 *et seq*. (the Act).[2] The administrative law judge initially credited claimant with twenty-six years of qualifying coal mine employment. Next, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find the existence of pneumoconiosis established by x-ray and medical opinion evidence under Sections 718.202(a)(1) and (a)(4) and total respiratory disability under Section 718.204(b). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.[3]

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 the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

---

[2] 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3] We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(2)-(3) and 718.204(b)(2)(i)-(iii) because these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 5, 6.

Claimant argues that the administrative law judge erred in failing to consider the exertional requirements of claimant's usual coal mine work as a drill operator and bolt machine operator in conjunction with the opinion of Dr. Baker, who diagnosed a minimal breathing impairment, when the administrative law judge determined that claimant was not totally disabled.

In responding to the question concerning the degree of the severity of claimant's respiratory impairment, Dr. Baker answered that claimant has a minimal impairment on Form CM-988, Director's Exhibit 7. In addition however, Dr. Baker marked the "No Impairment" box when asked to characterize claimant's impairment on an accompanying addendum to Form CM-988. Director's Exhibit 7. While an opinion indicating even a "mild" respiratory impairment may establish total disability if it precludes the performance of the miner's usual duties, *see Cornett v. Benham Coal Co.*, 227 F.3d 569, 22 BLR 2-107, 2-124 (6th Cir. 2000); in this case, where the physician went on to also conclude that claimant had no respiratory impairment, the administrative law judge permissibly concluded that the opinion was insufficient to establish total disability. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172-173, 21 BLR 2-34, 2-45-46 (4th Cir. 1997). Accordingly, we affirm the administrative law judge's finding that claimant has failed to establish total disability by medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986); Decision and Order at 6. Claimant's failure to establish total respiratory disability under Section 718.204(c), a requisite element of entitlement pursuant to Part 718, obviates the need to address claimant's arguments with respect to the existence of pneumoconiosis under Section 718.202(a)(1) and (a)(4). *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge