BRB No. 13-0434 BLA

WILLARD L. MEADE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DICKENSON-RUSSELL COAL COMPANY, LIMITED LIABILITY CORPORATION	)	DATE ISSUED: 02/26/2014
	)	
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 Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Willard L. Meade, Honaker, Virginia, *pro se*.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order – Denial of Benefits (2011-BLA-5930) of Administrative Law Judge Richard T. Stansell-Gamm, rendered on a claim filed on July 8, 2010, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C §§901-944 (2012) (the Act). Based on the filing date of this claim, the administrative law judge considered claimant's entitlement under amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] The administrative

[1] Under amended 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

law judge found that claimant established thirty-three years of underground coal mine employment but determined that the evidence was insufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Therefore, the administrative law judge found that claimant was unable to invoke the rebuttable presumption of total disability due to pneumoconiosis at amended Section 411(c)(4). The administrative law judge also found that entitlement to benefits was precluded under 20 C.F.R. Part 718. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Neither employer, nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

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. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law.[2] 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 the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 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. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

The administrative law judge found that claimant failed to establish total disability and, therefore, was unable to invoke the rebuttable presumption of total disability due to pneumoconiosis at amended Section 411(c)(4), or establish entitlement under 20 C.F.R.

---

conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013) (to be codified at 20 C.F.R. §718.305).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's coal mine employment was in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 3.

Part 718. We affirm the administrative law judge's determination that claimant is not totally disabled, as it is supported by substantial evidence.

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge noted correctly that the record contains two pulmonary function tests, dated October 25, 2010 and July 11, 2011, each of which was non-qualifying for total disability under the regulations.[3] *See* Decision and Order at 6; Director's Exhibit 11; Employer's Exhibit 6. The administrative law judge also properly found that claimant was unable to establish total disability at 20 C.F.R. §718.204(b)(2)(ii), as the two arterial blood gas studies of record, dated October 25, 2010 and July 11, 2011, produced non-qualifying values. *See* Decision and Order at 7; Director's Exhibit 14; Employer's Exhibit 6. Furthermore, because the record contains no evidence that claimant has cor pulmonale with right-sided congestive heart failure, we affirm the administrative law judge's finding that claimant is unable to establish total disability at 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 5.

Lastly, the administrative law judge found that the record contains three medical opinions, by Drs. Forehand, McSharry, and Hippensteel.[4] *See* Decision and Order at 9-11; Director's Exhibit 14; Employer's Exhibits 6, 8, 7. The administrative law judge noted correctly that none of the doctors opined that claimant is totally disabled by a respiratory or pulmonary impairment. Decision and Order at 7. Therefore, we affirm the administrative law judge's finding that claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id*.

Because claimant failed to establish a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's determination that claimant is

[3] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[4] The administrative law judge noted that treatment records from a physician's assistant who treated claimant did not address whether claimant is totally disabled. *See* Decision and Order at 11; Employer's Exhibit 3. Dr. Forehand examined claimant on October 25, 2010, and opined that claimant retained sufficient residual ventilatory capacity to return to his last coal mine job. Director's Exhibit 14. Dr. McSharry examined claimant on July 11, 2011, and testified that claimant was not totally disabled from a respiratory or pulmonary impairment. Employer's Exhibits 6, 8. Dr. Hippensteel examined claimant on July 3, 2012, and also stated that he found no objective evidence of respiratory or pulmonary disability. Employer's Exhibit 7.

unable to invoke the Section 411(c)(4) presumption. *See* 30 U.S.C. §921(c)(4); Decision and Order at 8. In addition, as claimant failed to establish total disability, a requisite element of entitlement under 20 C.F.R. Part 718, benefits are precluded.[5] *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2; Decision and Order at 13.

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

[5] In light of our affirmance of the administrative law judge's finding that claimant is not totally disabled, it is not necessary that we further address whether substantial evidence supports the administrative law judge's conclusion that claimant does not have pneumoconiosis. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).