

BRB No. 97-1079 BLA

JIMMY CAMPBELL)
)
 Claimant-Petitioner)
)
 v.)
)
 INTERSTATE COAL COMPANY,)
 INCORPORATED)
) 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 of J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Timothy J. Walker, London, Kentucky, for employer.

Before: SMITH, BROWN, and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1311) of Administrative Law Judge J. Michael O'Neill 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). The administrative law judge found eighteen to twenty years of coal mine employment established and adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ The administrative law judge found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4) and that total disability was not established pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were

¹Claimant filed a claim on March 20, 1995, Director's Exhibit 1.

denied. On appeal, claimant contends that the administrative law judge erred in failing to find the existence of pneumoconiosis arising out of coal mine employment established pursuant to Section 718.202(a)(1), (a)(4) and 20 C.F.R. §718.203(b), and in failing to find total disability established pursuant to Section 718.204(c). Employer responds, urging that the administrative law judge's Decision and Order denying benefits be affirmed. The Director, Office of Workers' Compensation Programs, as a party-in-interest, has not responded to 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 into the Act 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 under Part 718 in this living miner's claim, it must be established that claimant suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. 20 C.F.R. §§718.3; 718.202; 718.203; 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).² Failure to prove any one of these elements precludes entitlement, *id.* Pursuant to Section 718.204(c), the administrative law judge must weigh all relevant evidence, like and unlike, with the burden on claimant to establish total respiratory disability by a preponderance of the evidence, see *Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27 (1991)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986).

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, contains no reversible error, and, therefore, is affirmed. Pursuant to Section 718.204(c), claimant contends that the administrative law judge erred in failing to find the medical opinion evidence sufficient to establish that claimant was totally disabled pursuant to Section 718.204(c)(4). Claimant contends that the administrative law judge erred in failing to

²The administrative law judge properly found that the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, is inapplicable to the instant claim, filed after January 1, 1982, see 20 C.F.R. §718.305(a), (e); Director's Exhibit 1. Decision and Order at 4.

consider the physical requirements of claimant's coal mine work with Dr. Vaezy's opinion, see Director's Exhibit 8, in weighing whether his opinion was sufficient to establish total disability. Claimant also contends that the relevant evidence establishes that claimant is also unable to perform comparable and gainful employment. Finally, claimant contends that, because pneumoconiosis is a progressive disease, it may be concluded that claimant's condition has worsened, adversely affecting his ability to perform his usual coal mine work.

As the administrative law judge found pursuant to Section 718.204(c), however, all of the relevant pulmonary function study evidence under Section 718.204(c)(1), see Director's Exhibits 7, 19, and blood gas study evidence of record under Section 718.204(c)(2), Director's Exhibits 9, 19, is non-qualifying.³ Decision and Order at 8. Furthermore, as the administrative law judge found, there is no evidence in the record of cor pulmonale with right-sided congestive heart failure, see 20 C.F.R. §718.204(c)(3).

Finally, pursuant to Section 718.204(c)(4), the administrative law judge properly found that none of the physicians who provided medical opinions found that claimant was totally disabled. Dr. Vaezy found claimant's pulmonary function study results revealed mild obstruction and his blood gas study results revealed mild hypoxia, Director's Exhibit 8. Dr. Broudy found mild chronic airways obstruction and believed that claimant retains the respiratory capacity to perform his coal mine work, Director's Exhibit 19. The administrative law judge properly found Dr. Vaezy's assessment of claimant's impairment was not sufficient to establish total disability, see *King v. Cannelton Industries Inc.*, 8 BLR 1-146 (1985), and, contrary to claimant's contention, opinions finding no significant or compensable impairment need not be discussed by the administrative law judge in terms of claimant's former job duties, see *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Thus, we affirm the administrative law judge's finding that total disability was not established pursuant to Section 718.204(c)(1)-(4) as supported by substantial evidence, see *Budash, supra*; *Fields, supra*; *Rafferty, supra*; *Shedlock, supra*. Consequently, inasmuch as total disability, a requisite element of entitlement,

³A "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, C, respectively. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (2).

was not established, entitlement under Part 718 is precluded, *see Trent, supra; Perry, supra.*⁴

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

⁴Inasmuch as we affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c), we need not address claimant's contentions and the administrative law judge's findings pursuant to Section 718.202(a), *see Trent, supra.*