BRB No. 97-1098 BLA

JIMMY D. HENSLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOUNTAIN CLAY, INCORPORATED	)	
	)	
and	)	
	)	Date Issued:
TRANSCO ENERGY CORPORATION	)	
	)	
Employer/Carrier-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-1576) 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 that the parties agreed that claimant had at least eleven years of coal mine employment 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 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)(4). 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). 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).

[1]Claimant filed a claim on June 8, 1995, Director's Exhibit 1.

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 should have considered the physical requirements of claimant's coal mine work with Dr. Baker's opinion, *see* Director's Exhibits 6-7; Claimant's Exhibit 2, 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.[2]

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 5, 18-20; Claimant's Exhibits 1-3, and blood gas study evidence of record under Section 718.204(c)(2), Director's Exhibits 8, 18-20; Claimant's Exhibit 2, is non-qualifying.[3] Decision and Order at 9-10. 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). Decision and Order at 10.

Finally, pursuant to Section 718.204(c)(4), the administrative law judge properly found that of the five physicians who provided medical opinions of record, only Dr. Baker came close to finding that claimant was totally disabled. In a 1993 report, Dr. Baker checked a box indicating that claimant was not physically able, from a pulmonary

---

[2]Contrary to claimant's contention that Dr. Baker's opinion may be sufficient to invoke the "presumption of total disability," *see generally* 20 C.F.R. §727.203, inasmuch as the instant claim was filed and adjudicated after March 31, 1980, the administrative law judge properly adjudicated the claim under Part 718, *see* 20 C.F.R. §718.2; *Knuckles v. Director, OWCP*, 869 F.2d 996, 12 BLR 2-217 (6th Cir. 1989); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986); *Muncy v. Wolfe Creek Collieries Coal Co.*, 3 BLR 1-627 (1981); *see also Saginaw Mining Co. v. Ferda*, 879 F.2d 198, 12 BLR 2-376 (6th Cir. 1989). Moreover, the 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.

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

standpoint, to do his usual coal mine employment or comparable and gainful work, Claimant's Exhibit 2. Dr. Baker explained his opinion, however, by stating that claimant "should not have further exposure to coal dust" and that claimant "may have difficulty doing sustained manual labor," *id*. Moreover, Dr. Baker subsequently stated in a July, 1995, opinion that claimant had a "minimal" pulmonary impairment, Director's Exhibit 6, and, after reviewing additional evidence, found that claimant had no pulmonary impairment in a September, 1995, opinion, Director's Exhibit 7. Drs. Wright, Director's Exhibit 18, Broudy, Director's Exhibits 19-20, Myers, Claimant's Exhibit 1, and Anderson, Claimant's Exhibit 3, all examined claimant and found that he was not totally disabled.

The administrative law judge, within his discretion, found that Dr. Baker's 1993 opinion that claimant "may" have difficulty doing sustained manual labor was equivocal, *see Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988), and, by inference, inconsistent with Dr. Baker's subsequent opinion that claimant had a "minimal" (or no) pulmonary impairment, *see Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Puleo v. Florence Mining Co.*, 8 BLR 1-198 (1984). Moreover, 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). In addition, the administrative law judge found, within his discretion, that Dr. Baker did not adequately explain the basis of his finding in light of the normal pulmonary function study and blood gas study results he relied on, whereas the administrative law judge credited the opinions of Drs. Myers, Wright, Broudy and Anderson as documented and reasoned, inasmuch as their opinions were better supported by the objective evidence of record, *see Wetzel, supra*.

It is for the administrative law judge, as the trier-of-fact, to determine whether an opinion is documented and reasoned, *see Fields, supra; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985), and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). 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, was not established, entitlement under Part 718 is precluded, *see Trent, supra; Perry, supra*.[4]

[4]Inasmuch 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

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

contentions and the administrative law judge's findings pursuant to Section 718.202(a), *see Trent, supra*.