BRB No. 98-0754 BLA

WILLIAM R. LIGHT, SR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BECKY MINING, 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 Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

William R. Light, Sr., Hurley, Virginia, *pro se*.[1]

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen, Chartered), Washington, D.C., for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

[1]Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on behalf of claimant that the Board review the administrative law judge's decision. In a letter dated February 27, 1998, the Board stated that claimant would be considered to be representing himself on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant, without the assistance of counsel, appeals the Decision and Order (97-BLA-0311) of Administrative Law Judge Mollie W. Neal 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 credited claimant with twenty-seven years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4)[2] and 718.203(b). However, the administrative law judge further found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) and insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the

[2]The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3). The administrative law judge also stated that "Claimant has not established the existence of pneumoconiosis under Section 718.202(a)(1). However, the administrative law judge's conclusion with respect to 20 C.F.R. §718.202(a)(1) appears to be a typographical error based on the context of the administrative law judge's analysis of the x-ray evidence. The administrative law judge stated that "notwithstanding the negative reading of [the March 8, 1996] chest film, I find the preponderance of the x-ray evidence to be positive for pneumoconiosis, in view of the uncontradicted opinions of the physicians who read seven of the nine chest films to be positive." Decision and Order at 6.

administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[3]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 law. 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).

[3]Inasmuch as the administrative law judge's length of coal mine employment finding and her findings pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b), which are not adverse to this *pro se* claimant, are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Initially, the administrative law judge found the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(1). The administrative law judge stated that "none of the valid [pulmonary function studies] qualify under the regulatory guidelines." Decision and Order at 10. Whereas the March 8, 1996 and July 24, 1996 studies yielded non-qualifying[4] values, Director's Exhibits 11, 29, the November 19, 1996 study yielded qualifying values before administering a bronchodilator and non-qualifying values after administering a bronchodilator, Employer's Exhibit 1. The administrative law judge properly discredited the qualifying pulmonary function study dated November 19, 1996 because Dr. Fino, the administering physician, opined that this study is invalid.[5] *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985)(2-1 opinion with Brown, J., dissenting). Thus, since the administrative law judge properly found that none of the valid pulmonary function studies of record yielded qualifying values, we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(1).

Further, since none of the arterial blood gas studies of record yielded qualifying values, we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(2). Director's Exhibits 16, 29; Employer's Exhibit 1. In addition, since the record does not contain

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[4]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 exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

[5]The administrative law judge stated that "Dr. Fino invalidated the results of the November 1996 study." Decision and Order at 10. The administrative law judge observed that Dr. Fino found "a premature termination to exhalation and a lack of reproducibility in the expiratory tracings." *Id*. The administrative law judge also observed that Dr. Fino found "the MVV value...to be invalid due to poor effort." *Id*.

any evidence of cor pulmonale with right sided congestive heart failure, we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(3).

In finding the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4), the administrative law judge considered the opinions of Drs. Castle, Fino, Forehand and Tuteur. The administrative law judge correctly stated that "[t]here is no physician who concludes Claimant is prevented from performing his usual coal mine employment because of his respiratory or pulmonary condition." Decision and Order at 11. Drs. Castle, Fino, Forehand and Tuteur opined that claimant does not suffer from a respiratory impairment. Director's Exhibits 12, 14, 29, 31; Employer's Exhibits 1, 3. Thus, since none of these physicians opined that claimant suffers from a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). *See Beatty v. Danri Corp. and Triangle Enterprises*, 16 BLR 1-11 (1991).

Since claimant failed to establish total disability at 20 C.F.R. §718.204(c), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge