BRB No. 99-0452 BLA

HERMAN KENNETH FIELDS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, 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 - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones), Pikeville, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant[1] appeals the Decision and Order - Denial of Benefits (97-BLA-1963) of Administrative Law Judge Daniel J. Roketenetz 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited claimant with nineteen and

[1] Claimant is Herman Kenneth Fields, the miner, who filed his application for benefits on August 26, 1996. Director's Exhibit 1.

one-half years of qualifying coal mine employment. The administrative law judge next found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and total respiratory disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred by failing to find the existence of pneumoconiosis under Section 718.202(a)(1), (a)(4), and total respiratory disability under 718.204(c)(4). Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.[2]

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

With respect to Section 718.204(c)(4), claimant argues that the administrative law judge improperly rejected Dr. Baker's opinion because it is based upon the miner's medical history, physical examination, and symptomatology, and is, therefore, documented. In addition, claimant avers that the administrative law judge erroneously discredited Dr. Baker's report on the basis that Dr. Baker relied on a non-qualifying pulmonary function study. Contrary to claimant's argument, it is within the administrative law judge's discretion, as the finder-of-fact, to determine whether the documentation underlying the physician's report could logically lead to an assessment that claimant is totally disabled by a respiratory or pulmonary impairment, *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985), and to accord persuasive weight to those physicians' opinions he finds to be adequately supported

[2] We affirm the administrative law judge's findings regarding length of coal mine employment and pursuant to Sections 718.202(a)(2), (a)(3) and 718.204(c)(1)-(3) inasmuch as 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 3-5, 8-9.

by their underlying documentation, *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985). The administrative law judge properly found that the opinion of Dr. Baker, the only physician of record who opined that claimant has a totally disabling respiratory impairment, was outweighed by the contrary opinions of Drs. Broudy, Vuskovich, Wicker, Anderson, Fino, and Myers because the latter physicians' opinions were better supported by the non-qualifying objective test results contained in the record. *See Trumbo*, *supra*; *King*, *supra*; *Lucostic*, *supra*; Decision and Order at 9; Director's Exhibits 36, 38, 15-18; Employer's Exhibits 2, 4, 5. Inasmuch as the administrative law judge permissibly determined that the opinions of Drs. Broudy, Vuskovich, Wicker, Anderson, Fino, and Myers, that claimant retains the respiratory capacity to perform his usual coal mining duties or similarly arduous manual labor, were entitled to determinative weight, we reject claimant's arguments.

Claimant additionally avers that the administrative law judge impermissibly failed to consider the exertional requirements of claimant's usual coal mine work, his age, and work experience in determining that claimant is not totally disabled. We disagree. Claimant is correct that the determination of whether a medical report is probative evidence of total respiratory disability pursuant to Section 718.204(c)(4) is a determination to be made by the administrative law judge through consideration of the exertional requirements of claimant's usual coal mine work in conjunction with a physician's assessment regarding claimant's physical abilities. *See Eagle v. Armco, Inc.*, 943 F.2d 509, 15 BLR 2-201 (4th Cir. 1991); *Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27, 1-29 (1991)(*en banc*); *Onderko v. Director, OWCP*, 14 BLR 1-2, 1-4 (1989). However, information regarding the miner's exertional work requirements is not germane to the total disability analysis where, as in the instant case, the physician finds no impairment at all. *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172-173, 21 BLR 2-34, 2-45-46 (4th Cir. 1997). Inasmuch as the administrative law judge permissibly accorded greater weight to the opinions of Drs. Broudy, Vuskovich, Wicker, Anderson, Fino, and Myers who found no evidence of respiratory or pulmonary disability pursuant to Section 718.204(c)(4), we reject claimant's argument. *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 9. We, therefore, affirm the administrative law judge's finding that claimant failed to establish total disability under Section 718.204(c), a requisite element of entitlement in this Part 718 case, inasmuch as this determination is rational and supported by substantial evidence.[3]

[3] Claimant's failure to affirmatively 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

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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

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*).