BRB Nos. 00-0454 BLA and
00-0454 BLA-A

GLASTON D. DEHART	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
HOBET MINING, INCORPORATED	)	DATE ISSUED:
	)	
Employer-Respondent	)	
Cross-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Glaston D. DeHart, Ethel, West Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (99-BLA-0595) of Administrative Law Judge Daniel L. Leland on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

[1] Claimant is Glaston D. DeHart, the miner, who filed his application for benefits on March 6, 1998. Director's Exhibit 1.

1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). Employer cross-appeals the Decision and Order of the administrative law judge. Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge initially found that employer stipulated that claimant worked in qualifying coal mine employment for twenty-three years. Next, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), and total disability pursuant to 20 C.F.R. §718.204(c), but failed 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 Decision and Order denying benefits of the administrative law judge. Employer cross-appeals, arguing that the administrative law judge erroneously found that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and total respiratory disability under Section 718.204(c). In the alternative, employer urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.

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 Co.*, 12 BLR 1-176 (1989). We must affirm the Decision and Order provided that the administrative law judge's findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law. 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).

Relevant to Section 718.204(b), a review of the record reveals the medical opinions of five physicians. In a report dated April 10, 1998, Dr. Ranavaya opined that coal workers' pneumoconiosis contributed "to a major extent" to claimant's moderate pulmonary impairment which prevents claimant from performing his last coal mine employment. Director's Exhibit 15. In two reports dated May 12, 1999 and July 28, 1999, Dr. Rasmussen opined that claimant suffers from coal workers' pneumoconiosis which arose from his coal mine employment and renders him totally disabled from resuming his last regular coal mine job. Claimant's Exhibits 1, 2. After conducting a pulmonary evaluation of claimant, Dr. Zaldivar opined on December 28, 1998 that claimant's pulmonary impairment, which is the result of a combination of cigarette smoking and coal mining, is insufficient to prevent

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2 In addition, the record contains the report of the West Virginia Occupational Pneumoconiosis Board dated October 24, 1988, diagnosing a fifteen percent pulmonary functional impairment attributable to occupational pneumoconiosis. Director's Exhibit 3.

claimant from performing his usual coal mine work. Employer's Exhibit 6. In a subsequent report dated June 14, 1999 and during his deposition taken on August 16, 1999, Dr. Zaldivar opined that claimant's pulmonary impairment is due to asthma and "has nothing to do with coal workers' pneumoconiosis." Employer's Exhibits 6, 9 at 44. After reviewing claimant's medical records on July 19, 1999 and August 26, 1999, Dr. Castle opined that claimant does not suffer from coal workers' pneumoconiosis, but rather, suffers from a moderate pulmonary impairment due to bronchial asthma and cigarette smoking. Dr. Castle opined further that, even if claimant were found to have pneumoconiosis, his opinion concerning the etiology of claimant's disability would not change because claimant "does not have a mixed, irreversible obstructive and restrictive ventilatory impairment." Employer's Exhibits 7, 12. Likewise, Dr. Morgan reviewed the medical records on July 10, 1999 and August 21, 1999 and opined that there is insufficient evidence to render a diagnosis of coal workers' pneumoconiosis and that claimant's moderate airways obstruction is "attributable to his continued habit of cigarette smoking." Employer's Exhibits 8, 11.

Initially, the administrative law judge, within a proper exercise of his discretion, accorded less weight to Dr. Ranavaya's opinion because Dr. Ranavaya failed to provide a basis for his conclusions and to explain why he ruled out cigarette smoking as the cause for claimant's impairment. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 1-147 n.2 (1984); Decision and Order at 11. Similarly, the administrative law judge permissibly found Dr. Rasmussen's opinion worthy of less weight inasmuch as Dr. Rasmussen failed to discuss claimant's cigarette smoking history and claimant's improvement after the administration of bronchodilators. *See Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); Decision and Order at 11. In determining that claimant failed to satisfy his burden of establishing that he is totally disabled at least in part due to pneumoconiosis, the administrative law judge reasonably accorded dispositive weight to the opinions of Drs. Zaldivar and Castle inasmuch as these physicians' opinions, that claimant's impairment was due to asthma and cigarette smoking, were well reasoned and supported by the evidence of record. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 11; Employer's Exhibits 6, 7, 9, 12. The administrative law judge properly addressed the inconsistency in Dr. Zaldivar's reports by finding that Dr. Zaldivar had originally attributed a portion of claimant's pulmonary impairment to coal workers' pneumoconiosis, but thereafter, Dr. Zaldivar reviewed valid ventilatory tests and the degree of reversibility of claimant's impairment, and consequently opined that the abnormality in claimant's condition was due to asthma. *See Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988); Decision and Order at 11; Employer's Exhibits 6, 9. The administrative law judge acknowledged that neither Dr. Zaldivar nor Dr. Castle attributed claimant's asthma to coal dust exposure and that both physicians stated that if claimant

ceased smoking and received medical treatment for his asthma, "he could greatly reduce if not reverse his impairment." *See Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995); *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); Decision and Order at 11. The administrative law judge, therefore, rationally accorded determinative weight to the opinions of Drs. Zaldivar and Castle that claimant's total disability is not due to pneumoconiosis under Section 718.204(b).

Inasmuch as the administrative law judge's determination that claimant failed to satisfy his burden of establishing that his total respiratory disability was due to pneumoconiosis is rational and supported by substantial evidence, we affirm the administrative law judge's determination pursuant to Section 718.204(b). Furthermore, claimant's failure to establish total disability causation, a requisite element in this Part 718 case, precludes entitlement to benefits, and we, therefore, affirm the Decision and Order of the administrative law judge denying benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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3 Claimant's failure to affirmatively establish total disability due to pneumoconiosis under Section 718.204(b), a requisite element of entitlement pursuant to Part 718, obviates the need to address employer's arguments contained in its cross-appeal. *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 - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge