BRB No. 04-0372 BLA

RALPH BACK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARCH ON THE NORTH FORK, INCORPORATED	)	DATE ISSUED: _____
	)	
and	)	
	)	
ARCH COAL, INCORPORATED	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Christina E. Noble (Barret, Haynes, May & Carter, P.S.C.), Hazard, Kentucky, for employer.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-5321) of Administrative Law Judge Alice M. Craft 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 over eighteen 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 insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[1]

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).

Claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv).[2] Claimant specifically asserts that the administrative law judge erred in discrediting Dr. Baker's opinion. The administrative law judge considered the reports of Drs. Anderson, Baker, Lockey and Wicker. Dr. Baker opined that claimant suffers from a Class I impairment. Director's Exhibit 16. Dr. Baker also opined that the presence of pneumoconiosis suggests a 100% occupational disability because persons who develop pneumoconiosis should limit further exposure to the offending agent. *Id*. Drs. Anderson,

[1]Since the administrative law judge's length of coal mine employment finding and his findings that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2]Claimant asserts that a single medical opinion supportive of a finding of total disability is "sufficient for invoking the presumption of total disability." Claimant's Brief at 7. However, claimant has not identified any presumption of total disability that is applicable in this case.

Lockey and Wicker opined that claimant retains the respiratory capacity to perform his usual coal mine work or comparable and gainful work in a dust-free environment. Director's Exhibits 12, 13, 19.

Claimant asserts that the administrative law judge erred in discrediting Dr. Baker's opinion because it is based on a non-qualifying pulmonary function study. Contrary to claimant's assertion, the administrative law judge permissibly discredited Dr. Baker's opinion because a doctor's recommendation against further coal dust exposure is insufficient to establish a totally disabling respiratory impairment. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989). As previously noted, Dr. Baker opined that the presence of pneumoconiosis suggests a 100% occupational disability because persons who develop pneumoconiosis should limit further exposure to the offending agent. Director's Exhibit 16. In addition, Dr. Baker opined that claimant suffers from a Class I impairment. *Id*. However, because Dr. Baker failed to explain the severity of such a diagnosis or to address whether such an impairment would prevent claimant from performing his usual coal mine employment, Dr. Baker's finding of a Class I impairment is insufficient to support a finding of total disability. *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd*, 9 BLR 1-104 (1986)(*en banc*). Thus, we reject claimant's assertion that the administrative law judge discredited Dr. Baker's opinion because it is based on a non-qualifying pulmonary function study. Moreover, since the administrative law judge permissibly discredited Dr. Baker's opinion, *Zimmerman*, 871 F.2d at 567, 12 BLR at 2-258; *Budash*, 9 BLR at 1-51-2, we reject claimant's assertion that the administrative law judge erred in failing to identify and compare the exertional requirements of claimant's usual coal mine work with Dr. Baker's assessment of claimant's impairment.

In addition, we reject claimant's assertion that the administrative law judge erred in failing to conclude that claimant's condition has worsened to the point that he is totally disabled since pneumoconiosis is a progressive and irreversible disease. Claimant has the burden of establishing each element of entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). The record contains no new credible medical opinion evidence that claimant is totally disabled from a respiratory impairment. 20 C.F.R. §718.204(b)(2)(iv).

We also hold that, contrary to claimant's assertion, an administrative law judge is not required to consider claimant's age, education and work experience in determining whether claimant has established that he is totally disabled from his usual coal mine work. *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83, 1-87 (1988). Since it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv).

Since claimant failed to establish total disability at 20 C.F.R. §718.204(b), an essential element of entitlement, we hold that the administrative law judge properly denied benefits

under 20 C.F.R. Part 718.[3] *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry*, 9 BLR at 1-2.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge

[3]In view of our disposition of this case at 20 C.F.R. §718.204(b), we decline to address claimant's contentions at 20 C.F.R. §718.202(a)(1) and (a)(4). *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).