

BRB No. 07-0383 BLA

J.E.T. )  
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 Claimant-Petitioner )  
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 v. )  
 )  
 RIO GROUP, INCORPORATED ) DATE ISSUED: 01/17/2008  
 )  
 and )  
 )  
 WEST VIRGINIA CWP FUND )  
 )  
 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 Denying Benefits of Richard A. Morgan,  
Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Waseem A. Karim (Jackson Kelly PLLC), Lexington, Kentucky, for  
employer.

Emily Goldberg-Kraft (Gregory F. Jacob, Solicitor of Labor; Rae Ellen  
Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for  
Administrative Litigation and Legal Advice), Washington, D.C., for the  
Director, Office of Workers' Compensation Programs, United States  
Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and  
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2005-BLA-6268) of Administrative Law Judge Richard A. Morgan on a miner's 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 18.69 years of qualifying coal mine employment, as stipulated by the parties, and adjudicated this claim, filed on August 9, 2004, pursuant to the regulatory provisions at 20 C.F.R. Part 718. The administrative law judge found that the weight of the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but found the evidence insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the medical opinion evidence of record insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a credible pulmonary evaluation, as required pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b), 20 C.F.R. §725.406(a). Employer responds, urging affirmance of the denial of benefits. The Director has filed a limited response, arguing that he met his obligation to provide claimant with a pulmonary evaluation that complies with the requirements of Section 413(b) of the Act.<sup>1</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>2</sup> 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that he is

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<sup>1</sup> We affirm, as unchallenged on appeal, the administrative law judge's findings that the weight of the evidence was sufficient to establish that existence of pneumoconiosis arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

<sup>2</sup> The law of the United States Court of Appeals for the Fourth Circuit is applicable, as the miner was employed in the coal mining industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 3.

totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901, 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Claimant contends that the administrative law judge erred in crediting the unreasoned medical report of Dr. Jarboe over the well-reasoned and well-documented opinion of Dr. Ranavaya in finding the medical opinion evidence insufficient to establish total disability at Section 718.204(b)(2)(iv). Claimant argues specifically that Dr. Jarboe was not aware of claimant's exertional requirements, and, thus, his opinion does not constitute substantial evidence upon which the administrative law judge could rely. Claimant's arguments are without merit.

Dr. Jarboe examined claimant on February 23, 2006 and noted that claimant "worked approximately 20 years, all underground. He operated a continuous miner for about 20 years." Employer's Exhibit 1. Dr. Jarboe stated that claimant was not totally and permanently disabled from a respiratory standpoint but retained the functional respiratory capacity to do his last coal mining job or one of similar physical demand in a dust free environment, and discussed his diagnosis in relation to the underlying tests he performed. Employer's Exhibit 1. Contrary to claimant's assertion, Dr. Jarboe was aware of claimant's specific job as a continuous miner operator, but concluded that claimant's mild respiratory impairment would not prevent him from performing this job based on claimant's normal diffusion capacity when corrected for lung volume, and normal blood gas levels. Employer's Exhibit 1. The administrative law judge acted within his discretion in according Dr. Ranavaya's contrary opinion less weight because the physician did not discuss how his diagnosis of a "moderate pulmonary impairment which would prevent [claimant] from performing his last coal mine employment on a sustained basis" was supported by the underlying objective data, particularly when it included a non-qualifying pulmonary function study and blood gas study. Decision and Order at 12-13; Director's Exhibit 13; see *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), citing *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*). As substantial evidence supports the administrative law judge's findings, we affirm his weighing of the medical opinion evidence at Section 718.204(b)(2)(iv).

Claimant next argues that, because the administrative law judge found that Dr. Ranavaya's opinion was not well-reasoned on the issue of total disability, the Director violated his statutory duty to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim. Claimant's Brief at 10. We disagree. Dr. Ranavaya, in performing claimant's Department of Labor pulmonary evaluation, conducted a physical examination; recorded claimant's symptoms as well as his employment, medical, and social histories; obtained an x-ray, EKG, pulmonary function

and arterial blood gas studies; addressed all of the elements of entitlement; and diagnosed pneumoconiosis, chronic obstructive pulmonary disease-chronic bronchitis, and hypertension. Director's Exhibit 13. The administrative law judge accorded Dr. Ranavaya's opinion reduced weight because the doctor did not specifically relate his diagnosis of a moderate pulmonary impairment to the underlying test documentation, but did not find the opinion to be wholly without merit. Decision and Order at 12. In these circumstances, where the physician's opinion is documented and inherently credible, the Director's statutory obligation is discharged, as the Director is required to provide miners with a complete evaluation, not a dispositive one. *See* 30 U.S.C. §923(b), 20 C.F.R. §725.406(a); *Newman v. Director, OWCP*, 745 F.2d 1162, 1168 (8th Cir. 1984).

Because claimant failed to establish that he is totally disabled from his coal mine employment, an essential element of entitlement, we affirm the administrative law judge's denial of benefits. *See Anderson*, 12 BLR at 1-112.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge