

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 19-0139 BLA

LOWELL THOMAS HENSLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
STILLHOUSE MINING, LLC)	DATE ISSUED: 01/29/2020
)	
and)	
)	
CHARTIS CASUALTY COMPANY)	
)	
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 Scott R. Morris,
Administrative Law Judge, United States Department of Labor.

John M. Gambrel (Gambrel & Wilder Law Offices, PLLC), London,
Kentucky, for claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for
employer/carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2016-BLA-05979) of Administrative Law Judge Scott R. Morris pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on November 5, 2015.

The administrative law judge credited claimant with thirty-seven years of qualifying coal mine employment based on the parties' stipulation, but found the evidence failed to establish the existence of a totally disabling respiratory impairment. Because claimant failed to establish a total respiratory disability, the administrative law judge found claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C §921(c)(4) (2012),¹ or establish entitlement to benefits under 20 C.F.R. Part 718. He declined to address any other issues and denied benefits. Decision and Order at 7, 16-17.

On appeal, claimant contends the administrative law judge erred in finding the evidence did not establish total disability under 20 C.F.R. §718.204(b)(2)(iv) and, therefore, erred in finding he did not invoke the Section 411(c)(4) presumption. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief in this appeal.²

¹ Under Section 411(c)(4) of the Act, a claimant is presumed totally disabled due to pneumoconiosis if he has at least fifteen years of underground coal mine employment, or surface coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

² The administrative law judge found the pulmonary function studies and arterial blood gas studies did not establish total disability. 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 8-12. These findings are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Moreover, as the administrative law judge ruled, because there is no evidence of cor pulmonale with right-sided congestive heart failure in the record, claimant cannot establish total disability under 20 C.F.R. §718.204(b)(2)(iii). *See* Decision and Order at 12.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 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 an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc). The sole issue in this appeal is whether the administrative law judge's determination that the claimant did not establish he has a totally disabling pulmonary or respiratory impairment is supported by substantial evidence in the record and is in accordance with the law.

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work.⁴ See 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function testing, arterial blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. See *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

Under Section 718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Dr. Ajjarapu, who opined claimant suffers from a totally disabling respiratory impairment, and the contrary opinion of Dr. Rosenberg, who opined he does

³ As claimant's last coal mine employment was in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

⁴ The administrative law judge determined the exertional requirements of claimant's usual coal mine employment as a section foreman constituted heavy work. Decision and Order at 7-8.

not.⁵ Director's Exhibit 16; Employer's Exhibit 1. The administrative law judge found Dr. Ajjarapu's opinion diagnosing total disability was not well-reasoned or documented because she relied on a single qualifying pulmonary function study in finding a severe respiratory impairment, whereas the administrative law judge found, in the aggregate, the pulmonary function studies do not support a finding of total disability. Decision and Order at 16; Director's Exhibit 16. Additionally, he found that although Dr. Ajjarapu noted the presence of coughing and shortness of breath, she did not relate them to her finding of disability. *Id.* Based on the entirety of Dr. Ajjarapu's medical report and opinion, the administrative law judge found she failed to articulate the rationale underlying her conclusions and, therefore, accorded her opinion "little weight." Decision and Order at 16.

Dr. Rosenberg concluded claimant has a mild impairment and can perform his coal mine employment. Employer's Exhibit 1. The administrative law judge likewise found that opinion not well-reasoned or documented because Dr. Rosenberg did not explain how the results from the tests he conducted or his observations from the physical examination supported his conclusions. Decision and Order at 16. Based on the lack of explanation, the administrative law judge accorded Dr. Rosenberg's opinion only "some weight." *Id.* In finding that neither physician adequately explained his or her disability opinion, the administrative law judge determined the weight of the medical opinion evidence does not support a finding of total disability. Consequently, he found the medical opinions failed to establish total disability. *Id.* at 16-17; *see* 20 C.F.R. §718.204(b)(2)(iv).

We reject claimant's contention that the administrative law judge erred in finding the medical opinions do not meet claimant's burden to establish total disability. Contrary to claimant's contention, the administrative law judge did not base his total disability finding on a determination that Dr. Rosenberg's opinion is more credible than and outweighs Dr. Ajjarapu's. He found them both entitled to reduced weight, permissibly finding the medical opinion evidence as a whole failed to establish total respiratory disability. Decision and Order at 16. As the trier-of-fact, the administrative law judge is charged with assessing the credibility of, and weight to be given to, the medical opinions based on the experts' explanations of their diagnoses. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013). He has done so. Claimant does not contest the reasons the administrative law judge identified for discrediting Dr. Ajjarapu's opinion. His

⁵ The administrative law judge also considered the opinion of Dr. Chavda. Claimant's Exhibit 6. He gave no weight to Dr. Chavda's opinion because Dr. Chavda noted the presence of a moderate obstructive and moderate restrictive disease but did not state whether those impairments resulted in claimant being totally disabled from a pulmonary standpoint. Decision and Order at 16. Claimant does not challenge this finding. *See Skrack*, 6 BLR at 1-711.

assertion that Dr. Ajjarapu's opinion is entitled to more weight is merely a request for the Board to reweigh the evidence, which we are not empowered to do. Claimant's Brief at 3-5; *see Anderson*, 12 BLR at 1-113. Because it is supported by substantial evidence, we affirm the administrative law judge's weighing of the medical opinions and determination that claimant failed to establish total disability under 20 C.F.R. §718.204(b)(2)(iv).

As claimant failed to establish total disability under 20 C.F.R. §718.204(b)(2)(iv), we also affirm the administrative law judge's overall finding that claimant failed to establish total disability. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198 (1986); Decision and Order at 17. Because claimant did not establish an essential element of entitlement under 20 C.F.R. Part 718, his right to benefits is precluded in this case. *Trent*, 11 BLR at 1-28; *Perry*, 9 BLR at 1-1.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge