BRB No. 97-0747 BLA

ROLAND BOWLING	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
TRANSCO ENERGY 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 of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Timothy J. Walker (Reece & Jensen, PLLC) London, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0266) of Administrative Law Judge Donald W. Mosser denying benefits on a duplicate claim[1] filed pursuant to the

[1]Claimant filed his first application for benefits on November 14, 1984. The district director issued an Order to Show Cause why the claim should not be abandoned on May 7,

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 accepted the parties' stipulation that claimant established fifteen years of qualifying coal mine employment. The administrative law judge then found that because claimant established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(4), an element previously adjudicated against him, claimant established a material change in conditions pursuant to 20 C.F.R. §725.309(c). Next, the administrative law judge found that claimant established that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), but failed to demonstrate total 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 erroneously found that he failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

1985. Director's Exhibit 38. The record is devoid of evidence indicating that claimant responded, therefore, his first claim was deemed abandoned. Claimant filed a second application for benefits on October 20, 1994. Director's Exhibit 1.

[2]We affirm the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), 718.204(c)(1)-(3), and 725.309(d) inasmuch as these determinations are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983).

On the issue of total disability, claimant avers that the opinions of Drs. Clarke and Myers[3] are sufficient to invoke the interim presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §727.203(a). Contrary to claimant's contention, the interim presumption arising under 20 C.F.R. Part 727 is inapplicable to the instant claim. Inasmuch as this duplicate claim was filed on October 20, 1994, Director's Exhibit 1, the administrative law judge properly adjudicated this claim pursuant to the permanent criteria found under 20 C.F.R. Part 718. *See* 20 C.F.R. §§718.1(b) and 718.2. Claimant also argues that the administrative law judge improperly failed to credit the opinions of Drs. Clarke and Myers inasmuch as these opinions are well documented and reasoned and, are therefore, sufficient to demonstrate that he suffers from a totally disabling respiratory impairment. The administrative law judge, within a proper exercise of his discretion, found the opinions of Drs. Clarke and Myers entitled to little weight because they failed to explain their total disability conclusions in light of the non-qualifying pulmonary function and arterial blood gas studies contained in their reports. Decision and Order at 14. The administrative law judge permissibly accorded determinative weight to the medical opinions of Drs. Lane, Anderson, Frank, and Broudy concluding that claimant does not have a totally disabling respiratory or pulmonary impairment because he found these opinions to be supported by their underlying documentation and objective tests of record. *See Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149, 1-155 (1989)(*en banc*); *McFarland v. Peabody Coal Co.*, 8 BLR 1-163, 1-166-67 n. 6 (1985); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 1-147 n. 2 (1984); Director's Exhibits 23, 24, 27, 30, 31, 38. Hence, we affirm the administrative law judge's finding that the medical opinion evidence fails to demonstrate total disability pursuant to Section 718.204(c)(4). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W. G. Moore & Sons*, 9 BLR 1-4 (1986); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). Inasmuch as the administrative law judge's determinations are supported by substantial evidence and are not irrational, *see Campbell v. Consolidation Coal Co.,* 811 F.2d 302, 9 BLR 2-221 (6th Cir. 1987); *Director, OWCP v. Rowe,* 719 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Fagg v. Amax Coal Co.,* 12 BLR 1-77 (1988), we affirm his finding that claimant failed to satisfy his burden of establishing total respiratory disability pursuant to 20 C.F.R. §718.204(c), a requisite element of entitlement under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

[3]Dr. Clarke opined, in a report dated February 22, 1994, that claimant is 100% totally and permanently disabled. Claimant's Exhibit 1. Dr. Myers concluded that, from a pulmonary standpoint, claimant is not physically able to perform his usual coal mine employment. Director's Exhibit 24.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge