

BRB No. 97-0790 BLA

ROBERT SPEED, JR.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JIM WALTER RESOURCES,)	DATE ISSUED:
INCORPORATED)	
)	
Employer-Respondent)	
)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Robert D. Whitfield, Chicago, Illinois, for claimant.

Stephen E. Brown (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-433) of Administrative Law Judge Thomas M. Burke 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 twenty-nine and three-quarters years of qualifying coal mine employment, as stipulated by the parties, and adjudicated this claim, filed on August 16, 1994, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings pursuant to Sections 718.202(a)(2) and 718.204(b), (c)(4), and contends that the administrative law judge erred in failing to remand this case to the district director to further develop the evidence. Employer responds, urging affirmance. The Director, Office of Worker's Compensation Programs (the Director), 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to be entitled to benefits pursuant to 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

¹The administrative law judge's finding regarding the length of coal mine employment, and his finding that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (3), (4) or total respiratory disability pursuant to 20 C.F.R. §718.204(c)(1)-(3), are affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Turning to the issue of total disability, claimant contends that the administrative law judge erred in failing to determine whether claimant was disabled from performing his last coal mine employment pursuant to Section 718.204(b), (c)(4). Specifically, claimant argues that the administrative law judge and the physicians of record did not describe claimant's last coal mine work or discuss whether his condition precluded him from performing those tasks. Claimant also argues that there was no discussion of the fact that claimant stopped work because of a disability,² or to what extent claimant's coal mine employment contributed to his disability. Lastly, claimant argues that, pursuant to 20 C.F.R. §725.456(e), "the obvious and extremely significant omissions and incomplete medical record required that the ALJ remand the file to the Director to develop essential evidence necessary to make findings supported by the record; or in the alternative, give the parties additional time to supplement the record." Claimant's Brief at 8.

Claimant's arguments are without merit. After accurately finding that none of the objective tests of record produced values demonstrating total disability under the regulatory criteria, the administrative law judge determined that Dr. Goldstein provided claimant with a complete pulmonary evaluation and concluded that claimant suffered from dyspnea secondary to hypertension but had no significant pulmonary disease. Decision and Order at 6, 9; Director's Exhibit 11. This diagnosis supports a finding of no compensable impairment and need not be discussed in terms of claimant's former job duties. See *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). As no physician of record either diagnosed a totally disabling respiratory or pulmonary impairment, or addressed the severity of claimant's impairment in such a way as to permit the administrative law judge to infer total disability, the administrative law judge properly found that the evidence was insufficient to establish total respiratory disability pursuant to Section 718.204(b), (c)(4). Decision and Order at 9; see generally *Beatty v. Danri Corp.*, 16 BLR 1-11 (1991); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986). We therefore affirm the administrative law judge's findings pursuant to Section 718.204, as supported by substantial evidence and in accordance with law.

We also reject claimant's argument that the administrative law judge was required to remand this case for further development of the record herein. Claimant was represented by counsel in these proceedings before the district director and the administrative law judge, and did not request supplementation of the record until the present appeal before the Board. Moreover, it is well established that claimant bears the burden of establishing the elements of entitlement, see generally *White v. Director, OWCP*, 6 BLR 1-368 (1983), and the administrative law judge is not required to assist claimant in developing evidence favorable to his case. See *King v. Consolidation Coal Co.*, 8 BLR 262 (1985); *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984).

²Contrary to claimant's arguments, the administrative law judge summarized claimant's jobs throughout his coal mine employment, and listed the duties of his last job as an inside laborer before going "out on disability." Decision and Order at 2. A review of the record reflects that claimant ended his employment on a disability related to surgery on his wrists. Hearing Transcript at 16-17.

Inasmuch as claimant has failed to establish the existence of a totally disabling respiratory impairment, a requisite element of entitlement under 20 C.F.R. Part 718, see *Trent, supra*, we affirm the administrative law judge's denial of benefits, and need not reach claimant's remaining arguments regarding the issue of the existence of pneumoconiosis at Section 718.202(a)(2).

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge