

BRB No. 97-0791 BLA

BOBBY B. CHILDERS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
RATLIFF-ELKHORN COAL COMPANY))	DATE ISSUED:
)	
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 of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-141) 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 at least forty-three years of qualifying coal mine employment, and adjudicated this claim, filed on November 20, 1991, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b), but insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings pursuant to

Section 718.204(c)(4). 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).

Claimant contends that the administrative law judge erred in finding the medical opinions of record insufficient to establish total respiratory disability at Section 718.204(c)(4). Specifically, claimant asserts that the opinions of Drs. Fritzhand and Sundaram support claimant's testimony that he is totally disabled from performing his usual coal mine employment from a respiratory standpoint, and that because the administrative law judge found these opinions sufficiently reasoned to support a finding of the existence of pneumoconiosis at Section 718.202(a)(4), it was error not to have credited them at Section 718.204(c)(4).

¹The administrative law judge's finding regarding the length of claimant's coal mine employment and his finding that the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(4) and 718.203(b), but insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1)-(3), are affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant's argument is without merit. After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence, consistent with applicable law, and must be affirmed. Claimant essentially requests a reweighing of the evidence, which is beyond the Board's scope of review. See *O'Keeffe, supra*. After finding that all of the objective tests of record produced non-qualifying values,² the administrative law judge accurately summarized the medical opinions of record and their underlying documentation, and permissibly accorded determinative weight to the opinions of Drs. Mettu, Broudy and Myers that claimant did not have a totally disabling respiratory impairment, as he found them most consistent with the objective evidence of record. See *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge acknowledged that he relied on the contrary opinions of Drs. Fritzhand and Sundaram in finding the existence of pneumoconiosis established, but acted within his discretion in according less weight to these opinions on the issue of total disability because the physicians failed to address the inconsistencies between their conclusion that claimant's respiratory impairment was totally disabling and the results of the objective diagnostic studies they performed. Decision and Order at 8-9; see generally *Cooper v. United States Steel Corp.*, 7 BLR 1-842 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983).

The administrative law judge's findings pursuant to Section 718.204(c)(4) are supported by substantial evidence and are affirmed. Inasmuch as claimant has failed to establish the existence of a totally disabling respiratory impairment, see *Beatty v. Danri Corp.*, 16 BLR 1-11 (1991), 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.

²A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(c)(1), (2).

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge