

BRB No. 88-0576 BLA

WILBUR DEEM))
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 Claimant-Petitioner))
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 v.))
))
SOLAR FUEL COMPANY))
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 and))
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OLD REPUBLIC INSURANCE))
COMPANY))
))
 Employer/Carrier-))
 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 Arthur C. White, Administrative Law Judge, United States Department of Labor.

Daniel G. Walter (Pawlowski, Creany and Tulowitzki), Ebensburg, Pennsylvania, for claimant.

Beth S. Kromer (Tillman & Thompson), Pittsburgh, Pennsylvania, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and FEIRTAG, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (84-BLA-8966) of Administrative Law Judge Arthur C. White denying benefits on a *Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

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 reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with thirty-four years of qualifying coal mine employment, but found that claimant failed to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202 or total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, challenging the administrative law judge's findings under Sections 718.202(a)(4) and 718.204(c)(4). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.¹

¹ The administrative law judge's finding that claimant failed to establish the

existence of pneumoconiosis pursuant to Section 718.202(a)(1) - (a)(3), his finding that claimant failed to establish total disability pursuant to Section 718.204(c)(1) - (c)(3), and his finding with regard to length of coal mine employment are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

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 establish entitlement 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).

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 of the administrative law judge is supported by substantial evidence and contains no reversible error. Claimant contends that, in evaluating the medical opinions on the issue of total disability pursuant to Section 718.204(c)(4), the administrative law judge failed to provide an adequate rationale or a valid legal basis for rejecting the opinions of Drs. McQuillan and Klemens, and that the

administrative law judge's findings thereunder are contrary to the weight of the evidence contained in the record as a whole. We disagree. The weight to be assigned the evidence is the province of the administrative law judge. See Price v. Peabody Coal Co., 7 BLR 1-671 (1985). The administrative law judge properly determined that all of the pulmonary function studies and blood gas studies of record were non-qualifying,² and permissibly gave less weight to the opinions of Drs. McQuillan and Klemens, who found that claimant was totally disabled, as their conclusions were not supported by the objective tests of record. Decision and Order at 6; see generally King v. Consolidation Coal Co., 8 BLR 1-262 (1985); Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). The administrative law judge reasonably relied on the opinions of Drs. Hanzel and Pickerill, who concluded that claimant had no significant respiratory impairment and could perform his usual coal mine employment duties, as the administrative law judge found that their opinions were reasoned and better supported by the objective evidence of record. See generally Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); King, supra; Wetzel v. Director, OWCP, 8 BLR 1-139 (1985); Lucostic, supra. The administrative law judge further determined that Dr. Pickerill had superior qualifications, see generally Cunningham v. Pittsburg and Midway Coal Co., 7 BLR 1-93, 1-96 (1984), and

² A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values.

performed the most recent examination of claimant. See generally Roberson v. Norfolk and Western Railway Co., 13 BLR 1-6, 1-13 (1989); Wetzel, supra; Gillespie v. Badger Coal Co., 7 BLR 1-839 (1985). The administrative law judge's findings and inferences are rational and based on substantial evidence, and we may not substitute our judgment. See Anderson, supra. Inasmuch as claimant has failed to establish a requisite element of entitlement under Part 718, i.e., total disability, we affirm the administrative law judge's finding that claimant is not entitled to benefits, and we need not address claimant's arguments concerning the issue of the existence of pneumoconiosis. See Trent, supra.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

ERIC FEIRTAG
Administrative Law Judge