

BRB No. 88-2595 BLA

JACK M. STAMPER))
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 Claimant-Petitioner))
))
 v.))
))
WESTMORELAND COAL COMPANY)) DATE ISSUED:
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 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 Ben L. O'Brien, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe & Farmer), Norton, Virginia, for claimant.

Mary Jane Brown (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: STAGE, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (87-BLA-1908) of Administrative Law Judge Ben L. O'Brien 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 *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).

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 at least fourteen and one-half years of qualifying coal mine employment. The administrative law judge found, however, 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 pursuant to Sections 718.202(a)(1) and (a)(4), 718.204(c)(4), and with respect to length of coal mine employment. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

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, consistent with applicable law, and must be affirmed. Turning to the issue of total disability, the administrative law judge properly determined that none of the pulmonary function study or blood gas study results of record produced qualifying results,¹ and that the record contained no evidence of cor pulmonale with right-sided congestive heart failure, thus claimant failed to establish total disability pursuant to Section 718.204(c)(1) - (c)(3). Decision and Order at 6, 7. In determining that the evidence failed to establish total disability pursuant to Section 718.204(c)(4), the administrative law judge rationally found that none of the medical opinions of record concluded that claimant suffered from a totally disabling respiratory or pulmonary impairment. Decision and Order at 7; Director's Exhibit 10; Claimant's Exhibit 3; Employer's Exhibit 1. Contrary to claimant's arguments, the opinion of Dr. Baxter,

¹ 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.

who indicated that there was no impairment of breathing at present but that claimant should not be exposed to any further dust, is insufficient to establish total disability pursuant to Section 718.204(c). Decision and Order at 5; Claimant's Exhibit 3; see Taylor v. Evans and Gambrel Co., Inc., 12 BLR 1-83, 1-88 (1988). The administrative law judge's findings pursuant to Section 718.204(c) are supported by substantial evidence, and we hereby affirm them. Inasmuch as claimant has failed to establish a requisite element of entitlement, i.e., total disability, claimant is precluded from entitlement to benefits under Part 718, and we need not address the remaining issues on appeal of whether claimant established the existence of pneumoconiosis and the length of his qualifying coal mine employment. See Trent, supra.

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

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge