BRB No. 90-0747 BLA

VERNON BOWLING	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEECO, INCORPORATED	)	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 Joel R. Williams, Administrative Law Judge, United States Department of Labor.

John C. Dixon, Barbourville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order (89-BLA-301) of Administrative Law Judge Joel R. Williams 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 reviewed this

*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 pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with eleven years of qualifying coal mine employment, as stipulated to by the parties. The administrative law judge found that claimant established 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 further found that claimant failed to establish 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 718.204(c)(4).[1] Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not

[1] We need not address claimant's arguments pursuant to Section 718.202(a)(1), inasmuch as the administrative law judge additionally found the existence of pneumoconiosis established pursuant to Section 718.202(a)(4), an alternative method. See Dixon v. North Camp Coal Co., 8 BLR 1-344 (1985).

participated 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 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).

[2] The administrative law judge's findings pursuant to Sections 718.202(a)(4) and 718.203(b), and 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).

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 found that the pulmonary function study and blood gas study evidence of record was non-qualifying,[3] and that the record contained no evidence of cor pulmonale with right-sided congestive heart failure, thus claimant has failed to establish total disability pursuant to Section 718.204(c)(1) - (c)(3). Contrary to claimant's arguments, the opinion of Dr. Baker finding claimant totally disabled from employment in a coal mine or a similar dusty environment is not the equivalent of a finding of total respiratory disability. See Taylor v. Evans and Gambrel Co., Inc., 12 BLR 1-83, 1-88 (1988). Decision and Order at 6, 8; Director's Exhibits 30, 34. See Boyd v. Freeman United Coal Mining Co., 6 BLR 1-159 (1983). As the remaining relevant medical opinions of record specifically found that claimant retained the respiratory capacity to perform his usual coal mine employment, the administrative law judge permissibly found that claimant failed to establish total disability pursuant to Section 718.204(c)(4). Decision and Order at 5-8; Director's Exhibit 13; Employer's Exhibits 1, 3; see generally Gee v.

[3] 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.

W.G. Moore and Sons, 9 BLR 1-4 (1986). 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. 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

FREDERICK D. NEUSNER
Administrative Law Judge