BRB No. 96-0151 BLA

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| LARRY D. SLONE | ) | |
| | ) | |
| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | DATE ISSUED: |
| M & D COAL COMPANY, INCORPORATED | ) | |
| | ) | |
| and | ) | |
| | ) | |
| AMERICAN BUSINESS & MERCANTILE INSURANCE MUTUAL, INCORPORATED | ) | |
| | ) | |
| Employer/Carrier-Respondents | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | DECISION and ORDER |
| Party-in-Interest | | |

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Larry D. Slone, Craynor, Kentucky, *pro se*.

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

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

PER CURIAM:

Claimant,[1] without the assistance of counsel, appeals the Decision and Order

(94-BLA-0690) of Administrative Law Judge Robert L. Hillyard 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 twelve years of coal mine employment, found that claimant has three dependents for purposes of augmentation of benefits, and concluded that employer is the responsible operator. Considering the merits of entitlement, the administrative law judge found that the evidence of record failed to establish the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c) and, accordingly, denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.[2]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co*., 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under 20 C.F.R. Part 718, claimant must demonstrate 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 one 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).

The administrative law judge concluded that the evidence of record failed to establish total respiratory disability pursuant to Section 718.204(c). Pursuant to Section 718.204(c)(1)-(3), the administrative law judge correctly noted that none of the pulmonary function or blood gas studies was qualifying[3] and there was no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 9. We therefore affirm his findings pursuant to Section 718.204(c)(1)-(3).

At Section 718.204(c)(4), the administrative law judge found that Drs. Lane, Dahhan, Fritzhand, Broudy, Fino, Branscomb, and Anderson opined that claimant had the pulmonary capacity to perform his usual coal mine employment as a roof bolter, while Drs. Hieronymus and Modi concluded that he was totally disabled. Decision and Order at 10; Director's Exhibits 11-15; Employer's Exhibits 4-6; Claimant's Exhibit 1.

The administrative law judge permissibly accorded diminished weight to the opinions of Drs. Hieronymus and Modi because he found them to be unreasoned, unexplained, and unsupported by the objective evidence. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge noted that Drs. Lane, Dahhan, Fritzhand, Broudy, Fino, Branscomb, and Anderson explained their diagnoses with reference to the medical data. Decision and Order at 10; Director's Exhibits 11-14; Employer's Exhibits 4-6. By contrast, the administrative law judge noted, Dr. Modi did not indicate what tests, if any, he relied upon in rendering his opinion, and Dr. Hieronymus did not explain his total disability diagnosis "particularly in light of the non-qualifying pulmonary function and blood gas studies." Decision and Order at 8, 11; Claimant's Exhibit 1; *see Clark*, *supra*; *Tackett*, *supra*; *Wetzel*, *supra*; *Pastva v. The Youhiogheny and Ohio Coal Co.*, 7 BLR 1-829 (1985). Inasmuch as the administrative law judge permissibly accorded greater weight to the medical opinions concluding that claimant is not totally disabled, we affirm his finding pursuant to Section 718.204(c)(4).

Thus, as claimant has failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c), a necessary element of entitlement under Part 718, the denial of benefits is affirmed. *See Trent*, *supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge