

BRB No. 06-0175 BLA

CHARLES F. CHANDLER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HOBET MINING, INCORPORATED)	DATE ISSUED: 07/27/2006
)	
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 – Denying Benefits of Daniel L. Leland,
Administrative Law Judge, United States Department of Labor.

Charles F. Chandler, Richwood, West Virginia, *pro se*.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia,
for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order – Denying Benefits (04-BLA-5646) of Administrative Law Judge Daniel L. Leland 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). Claimant filed his claim for benefits on August 15, 2001. Director’s Exhibit 1. The district director issued a Proposed Decision and Order denying benefits on September 18, 2003. Director’s Exhibit 30. At claimant’s request, the matter was forwarded to the Office of Administrative Law Judges for a decision on the record.¹ The administrative law judge

¹ Claimant failed to appear at a formal hearing scheduled for May 18, 2005 in Charleston, West Virginia. The administrative law judge issued an Order to Show Cause

found that the medical evidence was insufficient to establish either the existence of pneumoconiosis or that claimant was totally disabled. Accordingly, the administrative law judge denied benefits.

Claimant appeals, challenging the denial of his claim. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief.

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. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, are supported by substantial evidence, and are in accordance with law.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim, claimant must prove that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that he is totally disabled due to pneumoconiosis. 20 C.F.R. §§718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Failure to prove any one of these elements precludes entitlement. *Id.*

Based on our review of the evidentiary record, the administrative law judge's Decision and Order, and the issues presented on appeal, we affirm the administrative law judge's denial of benefits as it is supported by substantial evidence and consistent with applicable law. We specifically affirm the administrative law judge's finding that claimant failed to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2).

on May 19, 2005, directing claimant to explain why he did not appear for the hearing. In a May 25, 2005 letter, claimant advised the administrative law judge that he had been unable to obtain an attorney and asked that his case be decided on the record. The administrative law judge granted claimant's request by Order dated June 7, 2005. *See* Order Granting Decision on the Record and Setting Briefing Schedule (Jun. 7, 2005).

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as claimant's last coal mine employment occurred in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 4.

In this case, the administrative law judge properly found that the two pulmonary function studies dated November 27, 2001 and May 16, 2003 were non-qualifying for total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).³ Director's Exhibits 8, 13; Decision and Order at 5. Similarly, the administrative law judge properly found that none of the three arterial blood gas studies were qualifying for total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Director's Exhibits 12, 26; Employer's Exhibit 1; Decision and Order at 5. Furthermore, as there was no evidence of record indicating that claimant suffered from cor pulmonale, claimant was unable to establish his total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(iii).

With respect to the medical opinion evidence, the administrative law judge correctly noted that claimant also failed to carry his burden of proof since there was no physician who opined that claimant was totally disabled by a respiratory or pulmonary impairment.⁴ Thus, the administrative law judge properly found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 5.

Consequently, we affirm, as supported by substantial evidence, the administrative law judge's finding that claimant failed to establish a totally disabling respiratory or pulmonary impairment under any of the provisions of 20 C.F.R. §718.204(b)(2). Since

³ A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values found in Appendices B and C of C.F.R. Part 718. See 20 C.F.R. §718.204(b)(2)(i) and (ii). A "non-qualifying test" produces results that exceed the table values.

⁴ The administrative law judge properly noted that the West Virginia Occupational Pneumoconiosis Board determined on May 16, 1993 that claimant had pneumoconiosis but no pulmonary functional impairment attributable to that disease. Director's Exhibit 11; Decision and Order at 3. Dr. Ranavaya performed an examination at the bequest of the Department of Labor (DOL) and when asked to respond on a DOL form as to "[t]he degree of severity of the impairment, particularly in terms of the extent to which the impairment prevents the patient from performing his/her current or last coal mine job of one year's duration;" Dr. Ranavaya wrote "none." Director's Exhibit 11. Dr. Crisalli opined that claimant did not have any respiratory or pulmonary impairment. Director's Exhibit 26. Dr. Zaldivar also opined that from a pulmonary standpoint, claimant was fully capable of performing his usual coal mine work. Employer's Exhibit 1.

claimant failed to establish total disability, a requisite element of entitlement, benefits are precluded.⁵ *Trent*, 11 BLR at 1-26; *Perry*, 9 BLR at 1-1.

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

⁵ Because claimant failed to establish total disability, we decline to address the administrative law judge’s findings with respect to the existence of pneumoconiosis at 20 C.F.R. §718.202(a).