

BRB No. 05-0932 BLA

AARON BROWNING)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED: 06/27/2006
GOLDEN CHANCE MINING,)	
INCORPORATED)	
)	
and)	
)	
WEST VIRGINIA COAL WORKERS')	
PNEUMOCONIOSIS FUND)	
)	
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 on Modification of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

Robert Weinberger (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Modification (04-BLA-6178) of Administrative Law Judge Richard A. Morgan 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).¹ Pursuant to the parties' stipulations, the administrative law judge credited claimant with at least thirty-eight years of coal mine employment² and found that he has pneumoconiosis arising out of coal mine employment. However, the administrative law judge found that the evidence did not establish that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical opinion evidence. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.³

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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 filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any

¹ Claimant's initial claim for benefits filed on June 7, 1973, was finally denied by the Department of Labor on August 4, 1983. Director's Exhibit 1. Claimant filed this claim on April 29, 2002. Director's Exhibit 3. The district director denied benefits and claimant timely requested modification, submitting additional evidence to the district director. Director's Exhibits 23, 26-29. The district director again denied benefits and claimant requested a hearing. Director's Exhibits 30, 37, 38.

² The record indicates that claimant's last coal mine employment occurred in West Virginia. Director's Exhibits 4, 7. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

³ The administrative law judge's findings that claimant did not establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered medical reports from Drs. Ranavaya and Zaldivar. After an examination, Dr. Ranavaya answered the “Impairment” question on the Department of Labor medical report form by writing “None determined at this time.”⁴ Director’s Exhibit 12 at 4. Dr. Zaldivar examined and tested claimant and concluded that “[t]here is no pulmonary impairment,” and that therefore claimant “is fully capable of performing his usual coal mining work or even arduous manual labor” Director’s Exhibit 36 at 2. Because neither doctor opined that claimant is totally disabled, the administrative law judge found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Claimant’s sole contention is that the administrative law judge erred because he “did not attempt to evaluate the nature of the claimant’s usual coal mine employment but simply accepted the contention of Dr. Ranavaya and Dr. Zaldivar that the claimant was not totally disabled.” Claimant’s Brief at 3. This analysis was unnecessary because the medical reports diagnosed no impairment. *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172-73, 21 BLR 2-34, 2-45-46 (4th Cir. 1997); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-142 (1985). We therefore reject claimant’s contention, and we affirm the administrative law judge’s finding pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Because claimant failed to establish that he is totally disabled, a necessary element of entitlement in a miner’s claim under Part 718, we affirm the administrative law judge’s denial of benefits. *See Trent*, 11 BLR at 1-27.

⁴ At Dr. Ranavaya’s August 15, 2002 examination, claimant declined to undergo a blood gas study or pulmonary function study. Director’s Exhibit 12. Later, on December 3, 2002, claimant underwent a pulmonary function study administered by Dr. Ranavaya, which Dr. Ranavaya interpreted as “[e]ssentially normal.” *Id.* Subsequently, a claims examiner noted to the file that she “talked with Dr. Ranavaya,” who indicated that the normal pulmonary function study “did not change results on CM 988” (the medical report form). *Id.* However, because Dr. Ranavaya did not submit a supplemental report stating this himself, the administrative law judge gave the claims examiner’s notation “little weight.” Decision and Order at 7 n.4.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge