

BRB No. 07-0876 BLA

P.E.)
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 Claimant-Petitioner)
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 v.)
)
 OLD BEN COAL COMPANY) DATE ISSUED: 06/27/2008
)
 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 Larry W. Price,
Administrative Law Judge, United States Department of Labor.

P.E., Varney, West Virginia, *pro se*.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order-Denying Benefits (2006-BLA-6030) of Administrative Law Judge Larry W. Price (the administrative law judge), on a subsequent 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 Crediting claimant with twenty-three years of coal mine employment, the administrative law judge adjudicated this subsequent claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the newly submitted evidence established the existence of pneumoconiosis pursuant to 20 C.F.R.

¹ Claimant initially filed a claim for benefits on October 4, 2000. The district director denied that claim on March 30, 2001, for failure to establish any element of entitlement. Director's Exhibit 1. Claimant filed the subsequent claim on April 4, 2002. Director's Exhibit 2.

§718.202(a)(1), an element of entitlement previously adjudicated against claimant, and that claimant had, therefore, established a change in an applicable condition of entitlement at 20 C.F.R. § 725.309(d). The administrative law judge then considered the entire record to determine whether claimant was entitled to benefits. The administrative law judge found that the evidence failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), an essential element of entitlement. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.

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 and is in accordance with law.² *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *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, supported by substantial evidence, and in accordance with law. 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 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, 1-112 (1989).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence and consistent with applicable law. It must, therefore, be affirmed. In his consideration of the evidence at 20 C.F.R. §718.204(b)(2)(i), the administrative law judge accurately determined that none of the pulmonary function study results was qualifying, and that claimant did not, therefore, establish total disability at Section 718.204(b)(2)(i). Decision and Order at 4. Turning to the blood gas study evidence of record at 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge noted that while two studies conducted on October 31, 2000 and on May 2, 2002 produced qualifying values, studies conducted

² The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner was employed in the coal mining industry in West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 1.

on September 29, 2003 and on May 17, 2006, did not produce qualifying values. The administrative law judge concluded, therefore, that claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2)(ii), as the results of the most recent blood gas studies, which were most probative, were non-qualifying, and because, at best, the blood gas study evidence was in equipoise. The administrative law judge also found that total disability could not be established at 20 C.F.R. §718.204(b)(2)(iii) because there was no evidence of cor pulmonale with right-sided congestive heart failure.

Finally, turning to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinion evidence. The administrative law judge noted that, in his most recent opinion, Dr. Ranavaya opined that claimant had “no evidence of any pulmonary impairment at this time.” Decision and Order at 5; Director’s Exhibit 58. The administrative law judge noted that, in the only other medical opinion of record, Dr. Zaldivar found that claimant had the pulmonary capacity to perform his usual coal mine employment. Decision and Order at 5; Director’s Exhibit 37. The administrative law judge properly concluded, therefore, that the medical opinion evidence did not carry claimant’s burden of establishing total disability at Section 718.204(b)(2)(iv). *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997). The administrative law judge also properly concluded that claimant failed to carry his burden of establishing total disability, on consideration of all of the relevant evidence at Section 718.204(b)(2)(i)-(iv). Decision and Order at 5; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff’d on recon.* 9 BLR 1-236 (1987)(*en banc*). Because claimant failed to establish total disability, an essential element of entitlement, the administrative law judge denied benefits. *See Anderson*, 12 BLR at 1-112.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge