BRB No. 97-1584 BLA

DONALD E. BALL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	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 Joan Huddy Rosenzweig, Administrative Law Judge, United States Department of Labor.

Donald E. Ball, Raven, Virginia, *pro se*.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant,[1] without the assistance of counsel,[2] appeals the Decision and Order

[1] Claimant is the miner, Donald E. Ball, who initially filed for benefits on December 31, 1982, which application was denied on October 5, 1983. Director's Exhibit 24. Claimant filed the present duplicate claim for benefits on October 25, 1994. Director's Exhibit 1.

[2] Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. White is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

(95-BLA-2303) of Administrative Law Judge Joan Huddy Rosenzweig 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 initially found that claimant established forty years of coal mine employment, and that the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment, which established a material change in conditions pursuant to 20 C.F.R. §725.309. 20 C.F.R. §§718.202(a)(1), 718.203(b). The administrative law judge further found however, that the evidence was insufficient to establish the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). If the findings of fact and conclusions of law of the administrative law judge 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).

To be entitled to benefits under Part 718, claimant must establish total respiratory disability due to pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.3, 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.

After consideration of the administrative law judge's Decision and Order, employer's response brief, and the evidence of record, we conclude that the Decision and Order denying benefits is supported by substantial evidence and contains no reversible error therein. The administrative law judge rationally found that claimant failed to establish that he suffers from a totally disabling respiratory impairment pursuant to Section 718.204(c). *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge considered the evidence submitted with the present claim, which consists of two non-qualifying pulmonary function studies,[3] one

[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

non-qualifying arterial blood gas study, and one arterial blood gas study which produced qualifying values at rest, but non-qualifying values after exercise, and four medical reports. Drs. Castle, Morgan and Jarboe all stated that claimant suffered from pneumoconiosis, but did not demonstrate any respiratory disability. Dr. Forehand also diagnosed pneumoconiosis, and stated that he found evidence of some airway obstruction which might affect claimant's endurance during strenuous exertion, but that claimant was able to work in areas of low dust concentrations and with lesser work loads. No evidence was submitted in support of claimant's earlier application for benefits.

The administrative law judge found that the objective tests did not establish total disability since the majority of the tests produced non-qualifying results, and the qualifying portion of the November 16, 1994 blood gas study was not interpreted as revealing any impairment by the reviewing physicians. The administrative law judge also rationally credited the reports of Drs. Castle, Jarboe and Forehand since Drs. Castle and Jarboe specifically indicated that no impairment was present, and Dr. Forehand clearly stated that claimant could perform work at lower levels of exertion, and his statement regarding claimant's ability to perform heavy labor was too equivocal to satisfy claimant's burden of proof on this issue. *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Jewell Smokeless Coal Corp. v. Street*, 42 F.3d 241, 19 BLR 2-1 (4th Cir. 1994); *Beatty v. Danri Corp.*, 16 BLR 1-11 (1991); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'd*, 9 BLR 1-104 (1986). Dr. Morgan's opinion was rationally rejected since this physician indicated that he believed that simple pneumoconiosis does not cause any respiratory impairment. *Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Butela v. United States Steel Corp.*, 8 BLR 1-48 (1985); Decision and Order at 3-10; Director's Exhibits 8-11; Employer's Exhibits 3, 5, 7-9. Since the administrative law judge has provided rational reasons for his determination, we affirm the Section 718.204(c) finding.[4]

718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

[4] We affirm the administrative law judge's findings that claimant has established the existence of pneumoconiosis arising out of coal mine employment, thereby establishing a material change in conditions, as they are supported by substantial evidence, favorable to claimant and are unchallenged on appeal. 20 C.F.R. §§718.202(a), 718.203(b), 725.309; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). We also affirm the administrative law judge's finding that total disability cannot be established pursuant to 20 C.F.R. §718.204(c)(3), since the record

The administrative law judge is empowered to weigh the medical evidence and draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its inferences on appeal. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark, supra*. Consequently, we affirm the administrative law judge's findings pursuant to Section 718.204(c), as they are supported by substantial evidence and are in accordance with law. Moreover, since claimant has failed to establish a required element of proof under Part 718, we affirm the denial of benefits. *See Trent, supra; Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

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contains no evidence indicating the presence of cor pulmonale with right sided congestive heart failure.