BRB No. 99-0635 BLA

CHARLIE SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NALLY & HAMILTON ENTERPRISES	)	DATE ISSUED:
	)	
and	)	
	)	
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-0524) of Administrative Law Judge Joseph E. Kane 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 twenty years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also challenges the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.[1]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge erred in finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). We disagree. The administrative law judge considered the opinions of Drs. Baker, Broudy, Fino and Matheny. The administrative law judge correctly stated that "[o]f the four physicians providing narrative reports, none of them opined

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[1]Inasmuch as the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§718.202(a)(2), (a)(3) and 718.204(c)(1)-(3) are not challenged on appeal, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

that the claimant was totally disabled by a respiratory or pulmonary impairment." Decision and Order at 9. Dr. Baker opined that claimant suffers from minimal or no respiratory impairment. Director's Exhibit 9. Similarly, Dr. Fino opined that claimant does not suffer from a disabling respiratory impairment. Employer's Exhibit 2. Dr. Broudy opined that claimant retains the respiratory capacity to perform the work of an underground coal miner or to do similar arduous manual labor. Director's Exhibit 24. Lastly, Dr. Matheny opined that claimant is well able physically to do the work required of a heavy equipment operator. Director's Exhibit 23. Thus, since none of these physicians rendered an opinion concerning the extent of claimant's impairment which, when compared with the exertional requirements of claimant's usual coal mine employment, supports a finding of total disability, we reject claimant's assertion that the administrative law judge erred in failing to compare the exertional requirements of claimant's usual coal mine employment with his condition. *See Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, *aff'd on recon. en banc*, 9 BLR 1-104 (1986). Further, claimant's assertion of vocational disability based on his age and limited education and work experience does not support a finding of total respiratory or pulmonary compensability under the Act. *See Ramey v. Kentland-Elkhorn Coal Corp.*, 755 F.2d 485, 7 BLR 2-124 (6th Cir. 1985). Therefore, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). *See Beatty v. Danri Corp. and Triangle Enterprises*, 16 BLR 1-11 (1991).

Since claimant failed to establish total disability at 20 C.F.R. §718.204(c), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718.[2] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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[2]In view of our disposition of the case on the merits at 20 C.F.R. §718.204(c), we decline to address claimant's contentions with regard to 20 C.F.R. §718.202(a)(1) and (a)(4). *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge