BRB No. 99-1050 BLA

KENNETH E. DOTSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Rudolph L. Jansen, Administrative Law Judge, United States Department of Labor.

Kenneth E. Dotson, Monticello, Indiana, *pro se*.

Helen H. Cox (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without the aid of counsel, the Decision and Order (98-BLA-1031) of Administrative Law Judge Rudolph L. Jansen 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 found twelve and a half years of coal mine employment established and adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] The administrative law judge found the existence of pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.203(b), but further found that total disability was not established pursuant to 20

[1] Claimant filed a claim on July 24, 1997, Director's Exhibit 1.

C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant's appeal, herein, followed. The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand in response, contending that the administrative law judge erred in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(1) and (4) and in finding that total disability was not established pursuant to Section 718.204(c).[2]

In an appeal filed by a claimant without the aid of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence, *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1985). 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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, it must be established that claimant suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. 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). Failure to prove any one of these elements precludes entitlement, *id*. Pursuant to Section 718.204(c), the administrative law judge must weigh all relevant evidence, like and unlike, with the burden on claimant to establish total respiratory disability by a preponderance of the evidence, *see Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27 (1991)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986).

[2] We accept the Director's Motion to Remand as his response brief, and herein decide the case on its merits.

Pursuant to Section 718.204(c)(1), the administrative law judge initially considered the two pulmonary function studies of record, which consisted of a 1997 qualifying study from Dr. Farber, Director's Exhibit 6, which was found to be invalid by Dr. Long, Director's Exhibit 7, and a 1998 non-qualifying study from Dr. Robinette, Claimant's Exhibit 1.[3] The administrative law judge credited Dr. Long's invalidation of the qualifying pulmonary function study in light of her experience and thorough explanation and, therefore, found that total disability was not demonstrated by the pulmonary function study evidence pursuant to subsection (c)(1), Decision and Order at 9-10. It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to determine whether an opinion is documented and reasoned, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields*, *supra*; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Thus, we affirm the administrative law judge's finding that total disability was not demonstrated by the pulmonary function study evidence pursuant to Section 718.204(c)(1).

Next, the administrative law judge considered the two blood gas studies of record pursuant to Section 718.204(c)(2), which consisted of a 1997 study from Dr. Farber which yielded qualifying results at rest and non-qualifying results after exercise, Director's Exhibits 6, 10, and a 1998 non-qualifying study from Dr. Robinette, Claimant's Exhibit 1. Inasmuch as the most recent blood gas study of record was non-qualifying, *see Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986), and because a non-qualifying result was obtained on the same day as the only qualifying blood gas study result, the administrative law judge found that total disability was not demonstrated by the blood gas study evidence pursuant to subsection (c)(2). Decision and Order at 10. An administrative law judge may give little weight to a blood gas study because of a discrepancy between its results at rest and after exercise, *see Mahan v. Kerr-McGee Coal Corp.*, 7 BLR 1-159 (1984), and because the results after exercise are non-qualifying and the other blood gas study results of record are non-qualifying, *see Coen v. Director, OWCP*, 7 BLR 1-30 (1984). Thus, we affirm the administrative law judge's finding that total disability was not demonstrated by the blood gas study evidence pursuant to Section 718.204(c)(2). In

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

addition, the administrative law judge also properly found that total disability was not demonstrated pursuant to Section 718.204(c)(3), as there was no evidence of cor pulmonale with right-sided congestive heart failure in the record, *see* 20 C.F.R. §718.204(c)(3).

Finally, the administrative law judge considered the medical opinion evidence of record pursuant to Section 718.204(c)(4), which consisted of the opinions of Drs. Farber, Director's Exhibit 9, and Cander, Director's Exhibit 25, neither of whom addressed disability, and the opinion of Dr. Robinette, who found that claimant was totally disabled from a respiratory standpoint, Claimant's Exhibit 1. The administrative law judge found Dr. Robinette's opinion demonstrated total disability pursuant to subsection (c)(4). However, in weighing all of the evidence together under Section 718.204(c), *see Budash*, *supra*; *Fields*, *supra*; *Rafferty*, *supra*; *Shedlock*, *supra*, the administrative law judge found that Dr. Robinette's opinion was not supported by the pulmonary function study and blood gas study evidence, *see Clark*, *supra*; *Fields*, *supra*; *Lucostic*, *supra*. Moreover, because the relevant medical opinion evidence consisted of only one physician's opinion from Dr. Robinette, and his qualifications were not in the record, the administrative law judge found Dr. Robinette's opinion and the evidence of record insufficient to establish total disability pursuant to Section 718.204(c), *see Budash*, *supra*; *Fields*, *supra*; *Rafferty*, *supra*; *Shedlock*, *supra*.

The Director correctly asserts that an administrative law judge may not reject a physician's opinion regarding disability merely because the objective test results he relied on were non-qualifying, *see McMath v. Director, OWCP*, 12 BLR 1-6 (1989); *Marsiglio v. Director, OWCP*, 8 BLR 1-190 (1985), and that a single medical report diagnosing total disability may be sufficient to establish total disability after all evidence relevant to the question of total disability is weighed, *see Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). The Director also contends that the fact that Dr. Robinette's qualifications were not available is irrelevant because Dr. Robinette's opinion was uncontradicted.

However, the administrative law judge, within his discretion, could properly conclude that the probative value of Dr. Robinette's medical opinion is undermined by an absence of objective evidence to support his conclusions, *see Fields*, *supra*; *Lucostic*, *supra*. Moreover, contrary to the Director's contention, the administrative law judge found that Dr. Robinette's opinion was contradicted by the objective evidence of record and, after weighing all of the evidence together under Section 718.204(c), found that claimant failed to carry his burden of establishing total disability by a preponderance of the evidence, *see Budash*, *supra*; *Fields*, *supra*; *Rafferty*, *supra*; *Mazgaj*, *supra*; *Shedlock*, *supra*. Thus, we affirm the administrative law judge's finding that total disability was not established pursuant to Section 718.204(c) as supported by substantial evidence. Consequently, inasmuch as we affirm the administrative law judge's finding that claimant failed to establish total disability, a requisite element of entitlement, we affirm the administrative law judge's finding that entitlement under Part 718

is precluded, *see Trent, supra*; *Perry, supra*.[4]

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

[4] Inasmuch as the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c) is affirmed, we need not address the Director's contentions regarding the administrative law judge's findings pursuant to Section 718.202(a), *see Trent, supra*.