BRB No. 97-1197 BLA

SAMUEL R. STURGILL	)	
	)	
Claimant-Petitioner	)	
	)	
WESTMORELAND 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 Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Samuel R. Sturgill, Big Stone Gap, Virginia, *pro se*.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] the Decision and Order (95-BLA-1575) of Administrative Law Judge Edward Terhune Miller 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 at least fourteen years, seven months and fourteen days of qualifying coal mine employment based on the stipulation of the parties, and adjudicated this claim, filed on October 18, 1994, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

[1]Tim White, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, filed an appeal on behalf of claimant, but is not representing him on appeal. *See Shelton v. Claude V. Keen Trucking Co.,* 19 BLR 1-88 (1995)(Order).

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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).

In order to be entitled to benefits pursuant to 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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, consistent with applicable law, and must be affirmed. Turning to the issue of total disability, the administrative law judge accurately determined that none of the pulmonary function studies or blood gas studies of record produced qualifying values, thus claimant could not establish total respiratory disability pursuant to Section 718.204(c)(1), (2).[2] Decision and Order at 4, 5, 9; Director's Exhibits 10, 12; Employer's Exhibit 1. The administrative law judge properly found that Section 718.204(c)(3) was not applicable because the record contained no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 9. Lastly, the administrative law judge reasonably found that the evidence was insufficient to establish total respiratory disability pursuant to Section 718.204(c)(4), *see Beatty v. Danri Corp.*, 16 BLR 1-11 (1991), as the two medical reports of record, provided by Drs. Paranthaman and Dahhan, both indicated that claimant might be disabled from non-respiratory conditions, but found that claimant suffered only a mild respiratory impairment and retained the respiratory capacity to perform his usual coal mine employment. Decision and Order at 5-7, 9; Director's Exhibit 11; Employer's Exhibit 1; *see generally Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986). The administrative law judge's findings pursuant to Section 718.204(c)(1)-(4) are supported by substantial evidence, within his discretion as trier of fact, and in accordance with law. Therefore, they

[2]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(c)(1), (2).

are affirmed.

Inasmuch as claimant has failed to establish total respiratory disability, a requisite element of entitlement under 20 C.F.R. Part 718, *see Trent, supra*, we affirm the administrative law judge's finding that claimant is not entitled to benefits. Consequently, we do not reach the administrative law judge's findings at Sections 718.202(a), 718.203(b) and 718.204(b) regarding the existence of pneumoconiosis, etiology and causation.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. MCGRANERY
Administrative Appeals Judge