

BRB No. 06-0713 BLA

HAROLD D. STEVENS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	DATE ISSUED: 05/30/2007
)	
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 Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

Harold D. Stevens, Cedar Bluff, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

Claimant, without the assistance of counsel,¹ appeals the Decision and Order - Denying Benefits (04-BLA-6753) of Administrative Law Judge Stephen L. Purcell on a claim² 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

¹ Mr. Ron Carson, Program Director of Stone Mountain Health Services, requested on behalf of claimant that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

² Claimant filed his application for benefits on October 10, 2003. Director's Exhibit 2.

law judge credited the parties' stipulation that claimant worked in qualifying coal mine employment for 29.53 years. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's decision denying benefits. Employer responds, urging affirmance of the administrative law judge's 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 considers 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). 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's Decision and Order denying benefits is rational, supported by substantial evidence and in accordance with law.³

At 20 C.F.R. 718.204(b)(2)(i), the administrative law judge considered the pulmonary function studies and the three consulting opinions rendered by Dr. Castle, regarding the validity of the tests. Decision and Order at 5-6, 27. Based on his consideration of these studies and Dr. Castle's opinions, the administrative law judge

³ The record contains six pulmonary function studies of record, consisting of four studies administered on December 15, 1993, December 11 2003, September 9, 2004, and January 11, 2005, which yielded non-qualifying values, and two studies administered in May 22, 2003 and March 10, 2004, which yielded qualifying values. Director's Exhibits 10, 22; Employer's Exhibits 22, 26, 31. In addition, Dr. Castle reviewed the validity of the pulmonary function studies dated May 22, 2003, December 11, 2003, and March 10, 2004. In a report dated August 18, 2004, he opined that the non-qualifying December 11, 2003 test represented a valid test and that the qualifying tests of May 22, 2003 and March 10, 2004 tests were invalid. Employer's Exhibits 15-17.

concluded that the non-qualifying studies⁴ dated December 11 2003, September 9, 2004, and January 11, 2005 were more probative and reliable, than the qualifying studies administered on May 22, 2003 and March 10, 2004, since at least two of the tests were more recent and the three non-qualifying studies constituted a majority of the pulmonary function study evidence. The administrative law judge, therefore, rationally found that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(b)(2)(i), and his finding, thereunder, is affirmed.⁵ Decision and Order at 27; *see Winchester v. Director, OWCP*, 9 BLR 1-177 (1986).

The administrative law judge also correctly determined that the blood gas studies of record⁶ were insufficient to demonstrate total respiratory disability at Section 718.204(b)(2)(ii) as none of the studies were qualifying. Decision and Order at 27; *see Tucker v. Director, OWCP*, 10 BLR 1-35 (1987). The administrative law judge also correctly determined that since the record does not contain evidence of cor pulmonale with right-sided congestive heart failure, total disability could not be demonstrated at Section 718.204(b)(2)(iii). Decision and Order at 27; *see* 20 C.F.R. §718.204(b)(2)(iii); *Newell v. Freeman United Mining Co.*, 13 BLR 1-37, 1-39 (1989), *rev'd on other grounds*, 933 F.2d 510, 15 BLR 2-124 (7th Cir. 1991). These findings are, accordingly, affirmed.

⁴ 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 and C, respectively. A “non-qualifying” study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

⁵ A review of the record reveals that the administrative law judge overlooked a pulmonary function study dated December 15, 1993. This oversight is harmless error, however, since this test, which produced non-qualifying values, would not change the administrative law judge’s determination that the pulmonary function study evidence was insufficient to demonstrate total respiratory disability. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

⁶ The record contains three blood gas studies dated December 11, 2003, September 9, 2004, and January 11, 2005 which all produced non-qualifying values. Director’s Exhibit 10, Employer’s Exhibits 26, 31.

After evaluating the physicians' opinions of record,⁷ the administrative law judge found that the opinions of Drs. Baker, Fino, and Castle, who found that claimant did not have a pulmonary or respiratory impairment and could perform his usual coal mine employment, were well-documented and well-reasoned because these physicians were familiar with the exertional requirements of claimant's usual coal mine employment and based their opinions on claimant's physical examinations, coal mine employment history, and diagnostic studies. This finding is rational and supported by substantial evidence. Decision and Order at 27; *see Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-32 (4th Cir. 1997) (when weighing medical opinions, administrative law judge should consider experts' qualifications, reasoning of opinion, physician's reliance on determinable symptoms and established science, detail of analysis, and freedom from irrelevant distractions and prejudices); *Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27, 1-29 (1991) (*en banc*); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge found the opinion of Dr. Naeye, which was based on chest x-rays and pulmonary function studies, entitled to diminished weight because Dr. Naeye failed to discuss claimant's lung condition relative to the regular duties of claimant's coal mine work. This was rational. Decision and Order at 27-28; *see Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986) (*en banc*). Hence, because the administrative law judge rationally credited the opinions of Drs. Baker, Fino, and Castle, that claimant retained the physiological capacity to perform his usual coal mine work, we affirm the administrative law judge's determination that the medical opinion evidence of record is insufficient to demonstrate that claimant was totally disabled pursuant to Section 718.204(b)(2)(iv). Decision and Order at 27-28; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee*, 9 BLR at 1-5.

After weighing the evidence relevant to Section 718.204(b)(2)(i)-(iv), the administrative law judge rationally found that it failed to affirmatively establish total respiratory disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (*en banc*). Accordingly, we affirm the administrative law judge's finding that total disability was not established pursuant to Section 718.204(b)(2), a requisite element of entitlement under Part 718. Decision and Order at 28; *see Clark*, 12 BLR at 1-155; *Taylor v. Evans and Gambrel Co., Inc.*, 12 BLR 1-83, 1-87 (1988); *Gee*, 9 BLR at 1-5.

⁷ The medical opinion evidence consists of the opinions of Drs. Baker, Fino, and Castle, all of whom opined that there was no evidence of a pulmonary or respiratory impairment, and that claimant had the respiratory capacity to return to his usual coal mine work. Director's Exhibit 10; Employer's Exhibits 26, 31. In addition, Dr. Naeye stated that claimant's coal workers' pneumoconiosis lesions were neither plentiful nor large enough to cause measurable abnormalities in lung function. Employer's Exhibit 30.

Consequently, we affirm the administrative law judge's determination that claimant is not entitled to benefits. *See* 20 C.F.R. §718.204(b)(2); *Gee*, 9 BLR at 1-5.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge