BRB No. 07-0722 BLA

R. F.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EIGHTY-FOUR MINING COMPANY	)	DATE ISSUED: 05/21/2008
	)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Lindsey M. Sbrolla (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (06-BLA-5687) of Administrative Law Judge Daniel L. Leland on a claim[1] 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). In the Decision and Order, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718 and credited claimant with thirty-three years of qualifying coal mine employment. The administrative law judge found that

[1] Claimant filed his application for benefits on June 6, 2005. Director's Exhibit 2.

claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to properly weigh all of the medical opinion evidence on the issue of legal pneumoconiosis pursuant to the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). *See* 20 C.F.R. §718.202(a)(4). Additionally, claimant contends that the administrative law judge erred in not according greater weight to the opinion of Dr. Begley based on his status as claimant's treating physician. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter, indicating his intention not to participate in this appeal.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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 establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling.[3] *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

At the outset, we note that claimant fails to challenge the administrative law judge's finding that the medical evidence failed to demonstrate total respiratory disability

[2] We affirm the administrative law judge's finding of thirty-three years of qualifying coal mine employment and his finding that claimant failed to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 2, 7.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because claimant's coal mine employment occurred in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director's Exhibit 2.

at Section 718.204(b)(2)(i)-(iv). *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *see also Skrack v. Director, OWCP*, 6 BLR 1-710 (1983).

Moreover, a review of the record reveals that the administrative law judge properly found that all of the pulmonary function study evidence of record produced non-qualifying values,[4] and therefore, failed to demonstrate total respiratory disability. 20 C.F.R. §718.204(b)(2)(i); *see Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); Decision and Order at 8; Director's Exhibits 9, 10; Claimant's Exhibits 4, 6, 7; Employer's Exhibits 1, 4, 9. Likewise, the administrative law judge properly determined that the three arterial blood gas studies of record produced non-qualifying values. *See Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); Decision and Order at 8; Director's Exhibit 10; Claimant's Exhibit 4; Employer's Exhibit 1. Hence, we affirm the administrative law judge's determination that total respiratory disability was not demonstrated under Section 718.204(b)(2)(i), (ii). Similarly, we affirm the administrative law judge's determination that the record does not contain evidence of cor pulmonale with right-sided congestive heart failure, and thus, total disability cannot be demonstrated by that means. 20 C.F.R. §718.204(b)(2)(iii); *see 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); Decision and Order at 8. Further, relevant to Section 718.204(b)(2)(iv), the administrative law judge properly assigned greater weight to the opinions of Drs. Pickerill and Fino, who opined that claimant's mild impairment does not preclude claimant from performing his intermittingly heavy labor as a roof bolter, than to the contrary opinions of Drs. Ewald, Schaaf, and Begley, because their opinions were better supported by the objective evidence of record. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986) (*en banc*); *see also 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*); Decision and Order at 8.[5] We, therefore, affirm the administrative law judge's finding

[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] Claimant's argument that the administrative law judge should have given preferential weight to the opinion of Dr. Begley because Dr. Begley was his treating physician is rejected. The administrative law judge properly discounted Dr. Begley's opinion as it was not as well reasoned as other opinions. *See* 20 C.F.R. §718.104(d)(5); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *Lucostic v. U. S. Steel Corp.*, 8 BLR 1-46 (1985).

that total respiratory disability was not established pursuant to Section 718.204(b)(2)(iv). Because we affirm the administrative law judge's finding that total respiratory disability was not established at Section 718.204(b)(2), a requisite element of entitlement under Part 718, the administrative law judge's determination that claimant is not entitled to benefits is affirmed.[6] *See* 20 C.F.R. §718.204(b)(2); *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

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

[6] Our affirmance of the administrative law judge's determination that claimant failed to established total respiratory disability pursuant to Section 718.204(b) obviates the need to address claimant's argument that the administrative law judge erred in his weighing of the medical opinion evidence on the issue of legal pneumoconiosis at Section 718.202(a)(4).