BRB No. 98-1157 BLA

CLAUDE MOORE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
B & R COAL COMPANY	)	DATE ISSUED:_____
	)	
and	)	
	)	
AMERICAN BUSINESS & MERCANTILE INSURANCE MUTUAL, INCORPORATED	)	
	)	
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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Claude Moore, Melvin, Kentucky, *pro se*.

Mark Solomons (Arter & Hadden LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (97-BLA-

0420) of Administrative Law Judge Robert L. Hillyard 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). After crediting claimant with fifteen and one-half years of coal mine employment, 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 generally contends that the administrative law judge erred in denying benefits. Employer/Carrier responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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 under Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director*, OWCP, 9 BLR 1-1 (1986) (*en banc*).

The administrative law judge properly noted that all of the pulmonary function and arterial blood gas studies of record are non-qualifying.[1] Decision and Order at 16; Director's Exhibits 11, 12, 27, 70, 72, 85, 87, 89. We, therefore, affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) and (c)(2).

[1]A "qualifying" pulmonary function study or arterial blood gas study yields values which are equal to or less than the applicable table values, *i.e.* Appendices B and C of Part 718. *See* 20 C.F.R. §718.204(c)(1) and (c)(2). A "non-qualifying" study yields values which exceed the requisite table values.

Inasmuch as there is no evidence of record indicating that claimant suffers from cor pulmonale with right sided congestive heart failure, the administrative law judge also properly found that claimant is precluded from establishing total disability pursuant to 20 C.F.R. §718.204(c)(3). Decision and Order at 16.

In his consideration of whether the medical opinion evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4), the administrative law judge noted that Dr. Baker opined that claimant should have no further exposure to coal dust, rock dust or similar noxious agents. Decision and Order at 17; Director's Exhibit 27. The administrative law judge properly found that Dr. Baker's statements were insufficient to support a finding of a totally disabling respiratory or pulmonary impairment. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989) (A medical opinion that merely advises against returning to work in a dusty environment is insufficient to establish a totally disabling respiratory or pulmonary impairment); *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83 (1988); Decision and Order at 17; Director's Exhibit 27.

The administrative law judge also permissibly rejected an unidentified physician's opinion of total disability found in July 26, 1989 progress notes, finding that the physician failed to provide an explanation for his assessment. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 17; Director's Exhibit 27. The administrative law judge also found that Dr. Myers's diagnosis of a mild obstructive defect was insufficient to support a finding of a totally disabling respiratory or pulmonary impairment. *See Moore v. Hobet Mining & Construction Co.*, 6 BLR 1-706 (1983) (An administrative law judge may find that a doctor's assessment of a respiratory impairment as mild establishes that it is not totally disabling); Decision and Order at 17; Director's Exhibit 27.

The administrative law judge accurately noted that the remaining physicians of record, Drs. Anderson, Lane, Mettu, Broudy, Dahhan, Fritzhand and Fino, each opined that claimant did not suffer from a totally disabling respiratory or pulmonary impairment. Decision and Order at 16-17; Director's Exhibits 13, 14, 27, 70, 72, 81, 82, 86, 89; Employer's Exhibits 1, 2. The administrative law judge properly accorded greater weight to the opinions of Drs. Anderson, Lane, Mettu, Broudy, Dahhan, Fritzhand and Fino because he found that their opinions were well reasoned and supported by the objective evidence of record. *See Clark*, *supra*; *Lucostic, supra*; *Voytovich v. Consolidation Coal Co.*, 5 BLR 1-141 (1982); Decision and Order at 16-17. Inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, *supra; Gee*, *supra*; *Perry*, *supra*. Consequently, the Board need not address the administrative law judge's findings under 20 C.F.R. §718.202. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order 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