

BRB No. 98-1171 BLA

CLARK NAPIER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY,)	DATE ISSUED:
INCORPORATED)	
)	
and)	
)	
SUN COAL COMPANY/)	
EMPLOYERS SERVICE CORPORATION)	
)	
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 - Denial of Benefits of Daniel K. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Harold Rader (Law Offices of Neville Smith), Manchester, Kentucky for employer/carrier.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denial of Benefits (97-BLA-0663) of

¹ Claimant is Clark Napier, the miner, who filed an application for benefits with the Department of Labor on May 6, 1994. Director's Exhibit 1.

Administrative Law Judge Daniel K. Roketenetz 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 administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1), contending that the x-rays of record are sufficient to establish the presence of the disease. Claimant also challenges the administrative law judge's finding that the medical opinions of record are insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). Claimant asserts that the opinions of Drs. Baker, Anderson, Clarke and Powell are sufficient to establish this element. Claimant further challenges the administrative law judge's finding that the evidence fails to establish total respiratory disability pursuant to Section 718.204(c)(4). Claimant contends that the opinions of Drs. Baker and Clarke are sufficient to establish this element. Employer, in response, asserts that the administrative law judge's findings that the evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(1) and (a)(4) and total respiratory disability pursuant to Section 718.204(c) are supported by substantial evidence, and accordingly, urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter, indicating that he will not respond to the instant appeal.²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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);

² Inasmuch as no party challenges the administrative law judge's findings that claimant established 19 years of qualifying coal mine employment, that employer is the putative responsible operator, and that the evidence fails to establish the existence of pneumoconiosis at Section 718.202(a)(2), (3), and total respiratory disability at Section 718.204(c)(1), (c)(2), and (c)(3), they are affirmed. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Coal Co.*, 6 BLR 1-710 (1983).

O'Keefe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

To be entitled to benefits under 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that he is total 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 one 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).

Claimant challenges the administrative law judge's finding that the evidence fails to establish total respiratory disability at Section 718.204(c)(4), contending that the opinions of Drs. Baker and Clarke establish that the miner suffers from a total respiratory disability. The administrative law judge found that six doctors submitted relevant medical opinions. He permissibly found that the opinions of Drs. Anderson, Powell, Vuskovich and Dahhan were entitled to more weight than those of Drs. Baker and Clarke because they were better supported by the objective evidence of record. *See Worhach v. Director, OWCP*, 12 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985).

The administrative law judge also correctly concluded that Drs. Anderson, Powell, Vuskovich and Dahhan all opined that claimant was not totally disabled. As the administrative law judge's finding that these opinions are legally insufficient to sustain claimant's burden of establishing total respiratory disability at Section 718.204(c)(4) is supported by substantial evidence, we affirm the administrative law judge's finding. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub. nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730; 17 BLR 2-64 (3d Cir. 1993); *Taylor v. Evans and Gambrel Co., Inc.*, 12 BLR 1-83 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'g on recon.*, 9 BLR 1-104(1986)(*en banc*); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986). Accordingly, we affirm the administrative law judge's finding at Section 718.204(c), as it is supported by substantial evidence and is in accordance with applicable law. As this finding precludes entitlement pursuant to the Part 718 regulations, *see Anderson, supra; Trent, supra*, we affirm the administrative law judge's denial of benefits, and need not reach the arguments made regarding the administrative law judge's findings at Section 718.202(a)(1), (4).

Accordingly, the administrative law judge's Decision and Order - Denial of 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