BRB No. 99-1313 BLA

DAVID W. GREER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ISLAND CREEK 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 - Denying Benefits of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

David W. Greer, Dawson Springs, Kentucky, *pro se*.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (98-BLA-0765) of Administrative Law Judge Rudolf L. Jansen 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 found that claimant established twenty-seven years and two months of qualifying coal mine employment, and based on the filing date of the claim, applied the regulations found at 20 C.F.R. Part 718. The administrative law judge found that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) and total disability at 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The

Director, Office of Workers' Compensation Programs, has not participated in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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 supported by substantial evidence, are rational, and are consistent 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, 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 prove any of these elements precludes entitlement. *Cross Mountain Coal , Inc. v. Ward*, 93 F.3d 211, 20 BLR 2-360 (6th Cir. 1996); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *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*).

At the outset, we affirm the administrative law judge's finding of twenty-seven years and two months of qualifying coal mine employment as supported by substantial evidence based on claimant's employment history forms, his application for benefits and testimony. *See Vickery v. Director, OWCP*, 8 BLR 1-430 (1986). Director's Exhibits 1, 2; Transcript 14-15, 23, 26, 28, 29. We also affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at Section 718.204(c)(1)-(4). The administrative law judge properly found that none of the pulmonary function studies or blood gas studies yielded qualifying results, and, therefore, properly found that claimant failed to establish total disability at Section 718.204(c)(1) and (2). Employer's Exhibit 11; Director's Exhibits 10, 12, 22, 38, 39, 41, 43; *Schetroma v. Director, OWCP*, 18 BLR 1-19 (1993). Likewise, the administrative law judge properly found that as the record was devoid of any evidence of cor pulmonale with right sided congestive heart failure, total disability could not be established pursuant to Section 718.204(c)(3).

Turning to the medical opinions of record, the administrative law judge found that they did not support a finding of total disability because the opinions that claimant was not totally disabled from a respiratory standpoint were the most persuasive of record. Decision and Order at 16. Further, in weighing all of the evidence together, *i.e.*, the pulmonary function studies, blood gas studies and medical opinions, the administrative

[1] 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, C, respectively. A "nonqualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

law judge found that it did not establish a totally disabling respiratory impairment and that the medical evidence was bolstered by claimant's own testimony that it is his heart condition that prevented him from working. Decision and Order at 16; Hearing Transcript at 26. Specifically, in considering the medical opinions of record, the administrative law judge accorded less weight to Dr. Wright's opinion which supported a finding of totally disabling respiratory impairment because Dr. Wright's opinion, which was "based in part" on a nonqualifying pulmonary function study, was not well-reasoned. Decision and Order at 15. Regarding Dr. Traughber's opinion which found mild obstructive ventilatory defect, the administrative law judge found that it did not establish total disability because "Dr. Traughber did not state directly whether [c]laimant was totally disabled." Decision and Order at 15. Further, the administrative law judge found that Dr. Traughber's determination of "a mild obstructive ventilatory deficit," when compared to claimant's work responsibilities did not establish a totally disabling respiratory impairment. Decision and Order at 15. Additionally, the administrative law judge did not find the opinions of Drs. Rodriguez-Acosta, Gallardo and Kapadia to be probative on the issue of total disability as Dr. Rodriguez-Acosta, who opined that claimant's cardiac condition contributed to his pulmonary condition, did not state whether claimant was totally disabled from a respiratory standpoint, Dr. Gallardo, who opined that claimant had fair exercise tolerance, did not state whether it was attributable to a respiratory condition, and Dr. Kapadia did not express an opinion on the issue of total disability. The administrative law judge, therefore, accorded greater weight to the opinions of Drs. Westerfield, Selby, Fino, Morgan and Jarvis as they were rendered by highly qualified, board certified physicians, and their opinions were better supported by the evidence of record. Decision and Order at 15-16.

Having reviewed the evidence of record, we conclude that the administrative law judge permissibly accorded greatest weight to the opinions of Drs. Westerfield, Selby, Fino, Morgan and Jarvis, who discussed claimant's coal mine employment and found that claimant did not have a totally disabling respiratory impairment, based on the superior qualifications of Drs. Westerfield, Selby, Fino, Morgan and Jarvis and because their opinions were better supported by the objective medical evidence of record and claimant's testimony. Decision and Order at 15-16; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *see Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). Likewise, the administrative law judge properly found that in weighing all the evidence together, *see* 20 C.F.R. §718.204(c), claimant failed to establish a totally disabling respiratory impairment. *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); *see also Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 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). We therefore affirm the administrative law judge's finding that claimant failed to establish a totally disabling respiratory impairment at Section 718.204(c), an essential element of entitlement, and we

will not, therefore, address the administrative law judge's other findings. *Adams, supra*; *Trent, supra*; *Gee, supra*; *Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge