BRB No. 04-0377 BLA

RONALD BRANHAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
OAKWOOD MINING COMPANY	)	
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	DATE ISSUED: 11/30/2004
	)	
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 Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Ronald Branham, Pikeville, Kentucky, *pro se*.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order – Denial of Benefits (03-BLA-5480) of Administrative Law Judge Robert L. Hillyard 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 credited claimant with thirteen years of coal mine employment, as stipulated by the parties, and found that the evidence failed to establish the existence of

pneumoconiosis at 20 C.F.R. §718.202 and failed to establish total disability at 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in his analysis of the medical evidence relevant to the issues of the existence of pneumoconiosis and total pulmonary or respiratory disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(b)(2), respectively. Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a brief in this appeal.[1]

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). The Board 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we affirm the administrative law judge's denial of benefits based on claimant's failure to establish total pulmonary or respiratory disability at 20 C.F.R. §718.204(b). In the instant case, the administrative law judge properly found that the single pulmonary function study and single conforming blood gas study of record each resulted in non-qualifying values. 20 C.F.R. §718.204(b)(2)(i), (ii); Director's Exhibit 14; Decision and Order at 5, 10. The administrative law judge further correctly noted that the record contains no medical evidence that shows that claimant suffers from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 10. Finally, the administrative law judge permissibly found unreasoned the sole medical opinion of record, that of Dr. Powell dated May 30, 2001, because the physician's opinion, that claimant "probably doesn't" have a respiratory impairment sufficient to prohibit him from performing his previous

[1] The administrative law judge's finding that claimant had thirteen years of coal mine employment is affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

coal mine employment, and that he is "uncertain" whether claimant is totally disabled due to a respiratory impairment due to the questionable validity of the pulmonary function study, was equivocal and based on a non-qualifying objective study. *See Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 22 BLR 2-25 (6th Cir. 2000); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988)(an administrative law judge may rationally accord less weight to a physician's opinion because he found the opinion to be equivocal and therefore not well reasoned); *see also Riley v. National Mines Corp.*, 852 F.2d 197, 11 BLR 2-182 (6th Cir. 1988)(it is the duty of the administrative law judge, as trier of fact, to weigh the medical evidence and make credibility determinations). Based on the foregoing, because we affirm the administrative law judge's finding that the evidence failed to establish total disability at 20 C.F.R. §718.204(b), we affirm the denial of benefits.

Because we affirm herein the administrative law judge's denial of benefits based on the insufficiency of the record evidence to establish total disability at 20 C.F.R. §718.204(b), we need not address claimant's challenge to the administrative law judge's findings in determining that the evidence fails to establish the existence of pneumoconiosis at 20 C.F.R. §718.202. A finding of entitlement to benefits is precluded in this case.[2]

[2] The administrative law judge's finding that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202 is additionally supported by substantial evidence. The record contains three readings of two x-rays. An x-ray dated May 30, 2003 was read once as negative by a reader with unknown qualifications, and an x-ray dated January 22, 2003 was read once as negative by a dually qualified B-reader and Board-certified radiologist, and once as positive by a reader with no specialized qualifications. Thus, the administrative law judge permissibly concluded that the weight of the x-ray evidence is negative for the existence of pneumoconiosis. *Staton v. Norfolk & Western Railway Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); Director's Exhibits 14, 32; Employer's Exhibit 1; Decision and Order at 6-7. The record contains no biopsy or autopsy evidence, *see* 20 C.F.R. §718.202(a)(2), and the presumptions referred to in 20 C.F.R. §718.202(a)(3) are inapplicable to the instant claim. Finally, the administrative law judge permissibly found that as Dr. Powell, the only physician to submit a report, diagnosed only a mild ventilatory defect due to smoking and not due to claimant's coal mine employment, claimant has not established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge