

BRB No. 06-0455 BLA

BRADLEY JOSEPH)
)
 Claimant-Petitioner)
)
 v.)
)
 LEATHERWOOD PROCESSING,) DATE ISSUED: 11/27/2006
 INCORPORATED)
)
 and)
)
 SELF-INSURED: JAMES RIVER COAL)
 COMPANY, c/o ACORDIA EMPLOYERS)
 SERVICE)
)
 Employer/Carrier-Respondent)
)
 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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Leroy Lewis, Hyden, Kentucky, for claimant.

Lois A. Kitts, James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5886) of Administrative Law Judge Thomas F. Phalen, Jr. (the administrative law judge) 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

the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied the claim.

On appeal, claimant challenges the administrative law judge's findings that the evidence fails to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also asserts that medical opinion evidence fails to establish total respiratory disability pursuant to 718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

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

In order to establish entitlement to benefits under 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. *See* 20 C.F.R. §§718.3, 718.201, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1(1986)(*en banc*).

Claimant challenges the administrative law judge's finding that the medical opinion evidence fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv), asserting that the opinion of Dr. Baker, together with his own lay testimony, is sufficient to establish this element of entitlement.¹ We disagree.

The administrative law judge correctly found that all of the physicians of record, including Dr. Baker, opined that claimant was not totally disabled by a respiratory impairment of any kind. Decision and Order at 10; Director's Exhibit 14; Employer's Exhibit 1-7. In fact, Dr. Baker answered "minimal or none" in response to a question

¹ As claimant does not challenge the administrative law judge's findings that the evidence fails to establish total respiratory disability pursuant to Section 718.204(b)(2)(i), (ii), (iii), these findings are affirmed. *See Hix v. Director, OWCP*, 824 F. 2d 526, 10 BLR 2-191 (6th Cir. 1987); *see Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

regarding the amount of impairment associated with the coal workers' pneumoconiosis and chronic bronchitis with which claimant was diagnosed. Director's Exhibit 14. Contrary to claimant's argument, therefore, Dr. Baker's opinion is insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See King v. Cannelton Industries, Inc.*, 8 BLR 1-146, 1-149 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-142 (1985); *Massey v. Eastern Associated Coal Corp.*, 7 BLR 1-37 (1984). Moreover, lay testimony without credited, corroborative medical evidence is insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1989). We affirm, therefore, the administrative law judge's determination that the evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv). As claimant has failed to establish total respiratory disability, a necessary element of entitlement, we affirm the administrative law judge's denial of benefits, *see Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1, and we need not address claimant's contentions with respect to the administrative law judge's findings on the existence of pneumoconiosis pursuant to Section 718.202(a), as they are rendered moot by our disposition of the case. *See Gee v. W.G. Moore and Sons*, 9 BLR 1-4, 1-5 (1986)(*en banc*); *Wetzel*, 8 BLR 1-139, 1-143.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge