

BRB No. 04-0166 BLA

CLEDIS HAMILTON)
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 Claimant-Petitioner)
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 v.)
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 LODESTAR ENERGY, INCORPORATED)
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 and)
)
 COSTAIN AMERICA, INCORPORATED) DATE ISSUED: 10/15/2004
)
 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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Cledis Hamilton, Pikeville, Kentucky, *pro se*.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order – Denial of Benefits (02-BLA-5250) of Administrative Law Judge Thomas F. Phalen, Jr. on a miner’s 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 fifteen and one-half years of coal mine employment. Decision and Order at 5. Applying the regulations pursuant to 20 C.F.R. Part 718, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total respiratory disability pursuant to 20 C.F.R. §718.204(b). *Id.* at 9-12. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer has not filed a response brief. The Director, Office of Workers’ Compensation Programs, has declined to participate 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 rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by the Act, 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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*).

¹Claimant is Cledis Hamilton, the miner, who filed his claim for benefits on February 12, 2001. Director’s Exhibit 2.

²Susie Davis, a benefits counselor with the Kentucky Black Lung Coalminers & Widows Association of Pikeville, Kentucky, requested, on behalf of claimant, that the Board review the administrative law judge’s decision, but Ms. Davis is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Regarding total respiratory disability, the administrative law judge considered the pulmonary function studies and the blood gas studies of record and properly found that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(b)(2)(i) and (b)(2)(ii) inasmuch as none of the tests yielded qualifying³ values. Decision and Order at 11-12; *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986). Additionally, the administrative law judge properly found that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(b)(2)(iii) inasmuch as the record does not contain any evidence of cor pulmonale with right-sided congestive heart failure. *Id.* at 12. Therefore, we affirm the administrative law judge's finding that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(b)(2)(i)-(b)(2)(iii).

Regarding the medical opinion evidence, the administrative law judge noted that both Drs. Wicker and Dahhan found that claimant has no pulmonary impairment, Director's Exhibit 10; Employer's Exhibit 1. Decision and Order at 12. The administrative law judge found "[b]ased on the opinions of Drs. Dahhan and Wicker in conjunction with Claimant's age, education, and the exertional requirements of his usual coal mine employment," that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(b)(2)(iv). *Id.* Because the opinions of Drs. Wicker and Dahhan are the only medical opinions of record and because they are insufficient to establish total respiratory disability,⁴ we affirm the administrative law judge's finding that claimant failed to demonstrate total respiratory disability by the medical opinion evidence. See 20 C.F.R. §718.204(b)(2)(iv); *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); *Young v. Barnes & Tucker*

³A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values, *i.e.*, Appendices B, C to 20 C.F.R. Part 718. A "non-qualifying" study yields values that exceed those values.

⁴The administrative law judge acknowledged that "[t]he exertional requirements of claimant's usual coal mine employment must be compared with a physician's assessment of the claimant's respiratory impairment." Decision and Order at 12. The record reflects that Dr. Dahhan had knowledge of claimant's usual coal mine employment as a roof bolter. Employer's Exhibit 1. Because Dr. Wicker found that claimant has no pulmonary impairment, Director's Exhibit 10, it was unnecessary for this physician to demonstrate knowledge of the physical requirements of claimant's usual coal mine employment before opining that claimant is not totally disabled from performing his usual coal mine work. See *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon.*, 9 BLR 1-104 (1986).

Co., 11 BLR 1-147 (1988); *Gee*, 9 BLR at 1-6; *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

In considering all of the relevant evidence pursuant to Section 718.204(b), the administrative law judge properly found that claimant failed to establish total respiratory disability by a preponderance of the evidence.⁵ Decision and Order at 13; *see Ondecko*, 512 U.S. at 280, 18 BLR at 2A-12; *Kuchwara*, 7 BLR at 1-170. Therefore, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(b). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *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)(*en banc*).

Because we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability, *see* 20 C.F.R. §718.204(b), a requisite element of entitlement under Part 718, *see Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2, we also affirm the administrative law judge's denial of benefits.

⁵The record contains no evidence of complicated pneumoconiosis. Therefore, the administrative law judge properly found that claimant was not entitled to invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304.

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