

BRB No. 00-0172 BLA

KERMIT H. BENDER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TALON RESOURCES,	)	
INCORPORATED	)	
	)	
and	)	DATE ISSUED:
	)	
WEST VIRGINIA COAL WORKERS'	)	
PNEUMOCONIOSIS FUND	)	
	)	
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 Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Otis R. Mann, Jr. (Clifford, Mann & Swisher, P.L.L.C.), Charleston, West Virginia, for claimant.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (99-BLA-0440) of Administrative Law Judge Richard A. Morgan 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). This case involves a duplicate claim filed on June 15, 1998,<sup>1</sup> which the

---

<sup>1</sup>Claimant previously filed a claim for benefits on January 29, 1997, which the district director denied on May 8, 1997 for claimant's failure to establish any of the elements of entitlement under 20 C.F.R. Part 718. Director's Exhibit 20. Claimant took no further action in pursuit of

administrative law judge considered under the applicable regulations at 20 C.F.R. Part 718. After crediting claimant with thirty-three years of coal mine employment based upon the stipulation of the parties, the administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4), an element of entitlement adjudicated against claimant in his previous claim. The administrative law judge also found that claimant was entitled to the rebuttable presumption under 20 C.F.R. §718.203(b) that his pneumoconiosis arose out of coal mine employment, and that there was insufficient evidence to rebut the presumption. The administrative law judge determined that, therefore, claimant established a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge found that the evidence of record was insufficient to establish total disability under 20 C.F.R. §718.204(c)(1)-(4), however. Accordingly, the administrative law judge denied benefits. On appeal, claimant challenges the administrative law judge's weighing of the conflicting medical opinions of Drs. Ranavaya and Gaziano under Section 718.204(c)(4). Employer has filed a letter indicating that it does not intend to file a formal response brief, but that it agrees with the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating he does not intend presently to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

---

benefits until filing the instant duplicate claim on June 15, 1998. Director's Exhibit 1.

On appeal, claimant contends that the administrative law judge erred in crediting Dr. Ranavaya's medical opinion over Dr. Gaziano's opinion in finding the evidence insufficient to establish total disability under Section 718.204(c)(4). We disagree. Dr. Ranavaya, who examined claimant on March 21, 1997 and July 24, 1998,<sup>2</sup> opined that claimant has only a mild impairment which would not prevent him from performing his last or his usual coal mine employment as a mine foreman and roof bolt operator.<sup>3</sup> Director's Exhibits 8, 20. In contrast, Dr. Gaziano, who examined claimant on February 27, 1998, indicated that claimant has a moderate degree of functional pulmonary impairment. Director's Exhibit 20. In a brief, supplemental letter dated May 8, 1998, Dr. Gaziano stated that claimant "would be unable to perform his previous employment, based upon either his pulmonary disease or his heart disease." *Id.*

Claimant asserts that Dr. Ranavaya was mistaken in opining that the results of the pulmonary function study he administered indicated the presence of only a mild impairment. Claimant bases his assertion on a comparison of the lower results of Dr. Ranavaya's pulmonary function study to the higher values later obtained by Dr. Gaziano. Claimant suggests that, since Dr. Gaziano found claimant to have a moderate impairment, Dr. Ranavaya should have found at least a moderate impairment as well since he obtained lower values. In advancing this argument, claimant fails to recognize that while the weighing of the conflicting opinions is for the administrative law judge, the interpretation of medical data is for the medical experts, not the administrative law judge. The record does not contain any medical evidence for the administrative law judge to have weighed invalidating or otherwise directly calling into question Dr. Ranavaya's assessment that the

---

<sup>2</sup>Dr. Ranavaya administered a pulmonary function study in the 1997 examination, and obtained resting arterial blood gas values in both the 1997 and 1998 examinations. Director's Exhibits 8, 20. These studies were non-qualifying for total disability under 20 C.F.R. §718.204(c)(1), (2). *Id.* Dr. Ranavaya indicated that he did not perform a pulmonary function study in 1998 or obtain exercise arterial blood gas results in either the 1997 or 1998 examination due to claimant's poorly controlled coronary artery disease. *Id.*

<sup>3</sup>In his 1997 and 1998 reports, Dr. Ranavaya noted that claimant last worked underground as a mine foreman and roof bolt operator from December 1992 to December 1996, and worked in coal mine employment exclusively underground for a total of more than thirty-three years. Director's Exhibits 8, 20. The administrative law judge stated that Dr. Ranavaya noted this history, Decision and Order at 7-8, and the administrative law judge found that Dr. Ranavaya appeared to understand that claimant's last coal mine employment was as a foreman and equipment operator underground. Decision and Order at 13. Claimant testified at the hearing that he last worked as a "working foreman...on the mid-night [sic] shift making all belt moves, power moves, [and] running coal...." Hearing Transcript at 14. Claimant testified that he "would do the belt moves...like the structuring – all of that." *Id.* Claimant stated that he, together with his co-workers, lifted belt structure on every shift, structure weighing one-hundred and twenty-five pounds. *Id.* at 14-15. Claimant also stated generally that he routinely lifted anywhere from seventy to one-hundred pounds on any given shift, and that his work was strenuous. *Id.* at 15.

pulmonary function studies he obtained were indicative of a mild impairment. The administrative law judge would have erred had he interpreted the pulmonary function study administered by Dr. Ranavaya as indicative of a higher degree of impairment. See *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). We, therefore, reject claimant's suggestion.

Furthermore, contrary to claimant's suggestion, the administrative law judge did not err in failing to accord greater weight to Dr. Gaziano's opinion based upon Dr. Gaziano's qualifications. The administrative law judge must consider the relative qualifications of physicians in weighing conflicting opinions, but this factor is not dispositive so long as the administrative law judge considers it. See *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). The administrative law judge properly noted that Dr. Gaziano is Board-certified in internal medicine and that the record does not indicate that Dr. Ranavaya possesses equal qualifications. Decision and Order at 7-8. The administrative law judge properly accorded greater weight to Dr. Ranavaya's opinion, however, because it was better supported by the objective evidence of record, *i.e.*, the pulmonary function and arterial blood gas study results which were uniformly non-qualifying for total disability. See *King v. Consolidation Coal Co.* 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order at 13; Director's Exhibits 8, 20. Additionally, the administrative law judge acted within his discretion in discounting Dr. Gaziano's opinion on the basis that the doctor did not adequately explain how his underlying documentation supports his conclusion that claimant would be unable to continue his usual coal mine employment. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); Decision and Order at 13; Director's Exhibit 20. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence of record is insufficient to establish total disability under Section 718.204(c)(4).<sup>4</sup> We further affirm, as unchallenged on appeal, the administrative law judge's finding that the evidence of record is insufficient to establish total disability under Section 718.204(c)(1)-(3). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 11-12.

Inasmuch as we herein affirm the administrative law judge's finding that the evidence of record did not establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4), a requisite element of entitlement under Part 718, we affirm the administrative law judge's denial of benefits. See *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*).

---

<sup>4</sup>Additionally, we affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment finding and findings under 20 C.F.R. §§725.309, 718.202(a)(1) and (a)(4), and 718.203(b). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3, 9-11.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge