

BRB No. 06-0342 BLA

TIMOTHY R. STEVENS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LEECO, INCORPORATED)	DATE ISSUED: 09/26/2006
)	
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 - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer/carrier.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor, Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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-6001) of Administrative Law Judge Robert L. Hillyard (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 failed to establish the existence of pneumoconiosis or total disability due to

pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1), 718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied the claim.¹

On appeal, claimant contends that the administrative law judge erred in admitting x-ray evidence into the record in excess of the regulatory limitations set forth in Section 725.414, and erred in finding that the x-ray evidence failed to establish the existence of pneumoconiosis. Claimant also contends that the Department of Labor (DOL) has failed to provide him with a complete and credible pulmonary evaluation pursuant to Section 413(b) of the Act inasmuch as the administrative law judge found that Dr. Simpao's opinion regarding the existence of pneumoconiosis was not well-reasoned. Additionally, claimant contends that the administrative law judge erred in finding that total respiratory disability was not established pursuant to Section 718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, (the Director) responds, asserting that Dr. Simpao's medical report regarding the existence of pneumoconiosis satisfied his obligation to provide claimant with a complete and credible pulmonary evaluation on that issue.

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'Keeffe 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*).

In addressing total disability, claimant contends:

[t]he claimant's usual coal mine work included being a roof bolter and a drill operator. It can be reasonably concluded that such duties involved the claimant being exposed to heavy concentrations of dust on a daily basis. Taking into consideration the claimant's condition against such duties, it is rational to conclude that the claimant's condition prevents him from engaging

¹ The instant claim was filed on August 26, 2002. Director's Exhibit 1.

in his usual employment in that such employment occurred in a dusty environment and involved exposure to dust on a daily basis.

Claimant's Brief at 6.

Claimant further contends that inasmuch as pneumoconiosis is a progressive and irreversible disease, it can be presumed claimant is totally disabled.

Contraindication against further coal dust exposure is not, however, sufficient to establish total disability. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989). Nor, contrary to claimant's argument, does the fact that pneumoconiosis is progressive and irreversible, entitle claimant to a presumption that he is, thereby, disabled. *See White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-7 n.8 (2004). Therefore, inasmuch as claimant has made no other allegations concerning the administrative law judge's total disability finding and has not raised, with specificity, any error made by the administrative law judge in his evaluation of the evidence on total disability, we must affirm the administrative law judge's finding thereunder. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986). Because claimant has failed to establish total disability, a necessary element of entitlement, benefits are precluded and we do not reach claimant's arguments concerning the existence of pneumoconiosis. 20 C.F.R. §718.1; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*).

Further, because, as the Director contends, the administrative law judge properly accorded less weight to the opinion of Dr. Simpao, regarding the existence of pneumoconiosis, as it was outweighed by the better reasoned and documented opinions of Drs. Rosenberg and Dahhan, the administrative law judge did not fully discredit Dr. Simpao's opinion regarding the existence of pneumoconiosis but merely found it less credible on that issue than the opinions of Drs. Rosenberg and Dahhan. Under these circumstances, therefore, the Director did not fail to provide claimant with a complete, credible pulmonary evaluation as required by the Act.

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