

BRB No. 07-0197 BLA

J.T.)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 09/25/2007
)
 ARCH ON THE NORTH FORK,)
 INCORPORATED)
)
 and)
)
 UNDERWRITERS SAFETY & CLAIMS,)
 INCORPORATED)
)
 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 Paul H. Teitler,
Administrative Law Judge, United States Department of Labor.

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

Denise M. Davidson. (Barret, Haynes, May, Carter & Davidson, P.S.C.),
Hazard, Kentucky, for employer/carrier.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (05-BLA-5815) of
Administrative Law Judge Paul H. Teitler 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). Claimant filed his application for benefits on March 19, 2002.
Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge

credited claimant with sixteen years of coal mine employment, based on a stipulation of the parties. Addressing the elements of entitlement, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). He further found that claimant failed to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding the x-ray evidence and medical opinion evidence insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1), (a)(4). In addition, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv). In response, employer urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has stated that he will not file a response brief in this appeal.¹

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

In order to establish entitlement to benefits in a living miner's claim pursuant to 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.² See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In challenging the administrative law judge's finding pursuant to Section

¹ We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment determination, his finding that the medical evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3) and that the medical evidence failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² As claimant's last coal mine employment occurred in Kentucky, we will apply the law of the United States Court of Appeals for the Sixth Circuit. Director's Exhibit 3; see *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

718.204(b)(2)(iv), claimant contends that the administrative law judge erred in finding the opinion of Dr. Baker insufficient to establish total disability. Claimant argues that in addressing the issue of total disability, the administrative law judge is required to consider the exertional requirements of claimant's usual coal mine work in conjunction with a physician's findings regarding the extent of any respiratory impairment. Claimant's Brief at 5-6, citing *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Hvizdzak v. North American Coal Corp.*, 7 BLR 1-469 (1984); *Parsons v. Black Diamond Coal Co.*, 7 BLR 1-236 (1984). The only specific argument claimant sets forth, however, is that:

The claimant's usual coal mine work included being a mechanic. 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 in his usual employment in that such employment occurred in a dusty environment and involved exposure to dust on a daily basis. Judge Teitler made no mention of the claimant's usual coal mine work in conjunction with Dr. Baker's opinion of disability.

Claimant's Brief at 6. Claimant's argument is without merit. The United States Court of Appeals for the Sixth Circuit has held that a physician's statement that a miner should limit further exposure to coal dust is not equivalent to a finding of total disability. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); accord *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83, 1-88 (1988). Moreover, the administrative law judge rationally found that Dr. Baker's opinion does not support a finding of total disability, because he opined that claimant is capable, from a respiratory standpoint, of performing his usual coal mine employment.³ Decision and Order at 10; Director's Exhibits 13, 35; *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Gee v. W. G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*).

We also reject claimant's argument that he must now be totally disabled since pneumoconiosis is a progressive and irreversible disease and "a considerable amount of time has passed since the initial diagnosis..." Claimant's Brief at 6-7. An

³ Dr. Baker diagnosed a mild impairment and, in a questionnaire accompanying his report, Dr. Baker again noted a mild impairment, but also checked the "yes" box, indicating that claimant was capable, from a respiratory standpoint, of performing his usual coal mine employment. Director's Exhibit 13. In a supplemental report, Dr. Baker stated that claimant retains the respiratory capacity to perform the work of a coal miner or similar work in a dust free environment. Director's Exhibit 35.

administrative law judge's findings on the issue of total disability must be based on the evidence of record, rather than general principles regarding the nature of pneumoconiosis. *White v. New White Coal Co.*, 23 BLR 1-1, 1-7 n.8 (2004). As claimant does not otherwise challenge the administrative law judge's weighing of the medical evidence pursuant to Section 718.204(b)(2)(iv), we affirm his finding that claimant has failed to establish a totally disabling respiratory or pulmonary impairment. Decision and Order at 10; see *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (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 findings that the medical evidence did not establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(b)(2), an essential element of entitlement, we must also affirm the denial of benefits. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. In light of this disposition of claimant's appeal, we need not reach claimant's arguments concerning the administrative law judge's weighing of the evidence under Section 718.202(a).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge