

BRB No. 11-0238 BLA

FRANK A. FELTY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED: 09/29/2011
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Joseph G. Greco, Jr., Nesquehoning, Pennsylvania, for claimant.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2008-BLA-05717) of Administrative Law Judge Janice K. Bullard (the administrative law judge) on a miner's claim filed on August 20, 2007, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). The administrative law judge found that claimant established 26.41 years of coal mine employment. The administrative law judge further found that claimant established the existence of pneumoconiosis and that it arose out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). She found, however, that claimant failed to establish a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). Further, because she found that total disability was not established, she found that claimant was

not entitled to invocation of the Section 411(c)(4) presumption of totally disabling pneumoconiosis,<sup>1</sup> 30 U.S.C. §921(c)(4). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that claimant failed to establish a totally disabling respiratory impairment pursuant to Section 718.204(b). Specifically, claimant contends that the administrative law judge erred in failing to consider the qualifying April 9, 2010 pulmonary function study, which was conducted by Dr. Kraynak pursuant to Section 718.204(b)(2)(i). Claimant also contends that the administrative law judge erred in failing to accord determinative weight to the opinion of Dr. Kraynak on the issue of total disability pursuant to Section 718.204(b)(2)(iv), because he was claimant's treating physician. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's denial of benefits, as supported by substantial evidence.<sup>2</sup>

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.<sup>3</sup> 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the

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<sup>1</sup> On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides that, if a miner has at least fifteen years of qualifying coal mine employment, and has a totally disabling respiratory impairment, there is a rebuttable presumption that the miner is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4).

<sup>2</sup> The administrative law judge's findings that claimant established 26.41 years of coal mine employment, the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iii), are affirmed, as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> Because claimant's coal mine employment was in Pennsylvania, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments on appeal, and the evidence of record, we conclude that the administrative law judge's Decision and Order denying benefits is rational, supported by substantial evidence, and in accordance with applicable law.

Contrary to claimant's contention, the administrative law judge considered the April 9, 2010 qualifying pulmonary function study conducted by Dr. Kraynak pursuant to Section 718.204(b)(2)(i), but found that the study was invalidated by Dr. Gaziano, whose qualifications are superior to those of Dr. Kraynak. Based on Dr. Gaziano's superior credentials, the administrative law judge permissibly credited his opinion that the qualifying study results were invalid.<sup>4</sup> *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). The administrative law judge, therefore, properly concluded that the qualifying, but invalidated, April 9, 2010 study, along with the other pulmonary function studies, which were non-qualifying, failed to establish total disability pursuant to Section 718.204(b)(2)(i). 20 C.F.R. §718.204(b)(2)(i).

Turning to the medical opinion evidence, the administrative law judge noted that Dr. Kraynak was the miner's treating physician. She found, however, that, contrary to claimant's contention, Dr. Kraynak's opinion was not entitled to greater weight merely because he was a treating physician. In so doing, the administrative law judge permissibly found that because: Dr. Kraynak's knowledge of claimant's coal mine employment and its exertional requirements was "vague;" he relied on a qualifying pulmonary function study that was subsequently invalidated; and claimant did not submit treatment records to substantiate Dr. Kraynak's opinion, the opinion was not well-reasoned. *See* 20 C.F.R. §718.104(d)(5); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*).

Instead, the administrative law judge accorded greater weight to the opinion of Dr. Talati, that claimant had no pulmonary disability, and the opinion of Dr. Rothfleisch, that claimant's mild pulmonary disability would not affect his ability to perform his last coal

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<sup>4</sup> The administrative law judge noted that Dr. Gaziano is Board-certified in Internal Medicine and Pulmonary Disease, while Dr. Kraynak is not. Decision and Order at 12. The record shows that Dr. Kraynak is Board-eligible in Family Medicine. Claimant's Exhibit 3.

mine employment. In doing so, the administrative law judge properly noted that these doctors had knowledge of claimant's usual coal mine employment and were better qualified than Dr. Kraynak, as they were Board-certified in pulmonary disease. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark*, 12 BLR at 1-155; *Dillon*, 11 BLR at 1-114. Consequently, we affirm the administrative law judge's finding that total disability was not established pursuant to Section 718.204(b)(2)(iv).

Because the administrative law judge properly found that total disability was not established pursuant to Section 718.204(b)(2)(i)-(iv), she properly found that claimant failed to establish total disability pursuant to Section 718.204(b). *Trent*, 11 BLR at 1-27. The administrative law judge also properly determined, based on this finding, that claimant was not entitled to consideration under Section 411(c)(4). 30 U.S.C. §921(c)(4).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge