

BRB No. 88-4377 BLA

CLYDE HORNBERGER)
)
 Claimant-Respondent)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED:
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Petitioner) DECISION and ORDER

Appeal of the Decision and Order of Michael H. Schoenfeld, Administrative Law Judge, United States Department of Labor.

Thomas F. Toole (Toole, Toole & Toole), Shenandoah, Pennsylvania, for claimant.

Richard A. Seid (Robert P. Davis, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

Before: STAGE, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and FEIRTAG, Administrative Law Judge.*

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order (88-BLA-289) of Administrative Law Judge Michael H. Schoenfeld awarding benefits 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 reviewed this claim pursuant to the

provisions of 20 C.F.R. Part 718, and credited claimant with six months of qualifying coal mine employment. The administrative law judge then found that claimant

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(c), and total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were awarded. The Director appeals, contending that the administrative law judge must separately determine whether claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Claimant responds, urging affirmance.¹

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 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 pursuant to 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

The Director contends that the administrative law judge erred in failing to address and weigh the conflicting opinions of Drs. Weber and Cable on the issue of whether the miner's total disability was due to pneumoconiosis, a requisite element of entitlement, pursuant to Section 718.204(b). See Tucker v. Director, OWCP, 10 BLR 1-35, 1-41 (1987). We agree. Consequently, we must vacate the award of benefits herein, and remand this case for the administrative law judge to determine whether claimant's totally disabling respiratory impairment was due to pneumoconiosis pursuant to Section 718.204(b), under the standard articulated in Bonessa v. United States Steel Corp., 884 F.2d 76, 13 BLR 2-23 (3d Cir. 1989).

¹ The administrative law judge's findings pursuant to Sections 718.202(a)(1), 718.203(c), and 718.204(c), and with regard to the length of coal mine employment, are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed in part, vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ERIC FEIRTAG
Administrative Law Judge