BRB Nos. 90-0992 BLA
and
90-0992 BLA-A

WILLIAM P. RAMSEY)
)
Claimant-Petitioner)
)
v.)
)
SEWELL COAL COMPANY)
Employer-Respondent) DATE ISSUED:
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-In-Interest) DECISION and ORDER

Appeal of the Decision and Order of Robert J. Feldman, Administrative Law Judge, United States Department of Labor.

William P. Ramsey, Summerville, West Virginia, pro se.
Stacy V. Killen (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: STAGE, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and Lawrence, Administrative Law Judge.*

PER CURIAM:

Claimant, without the assistance of counsel, appeals, and employer cross-appeals the Decision and Order (88-BLA-2052) of Administrative Law Judge Robert J. Feldman denying 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). Claimant initially filed for benefits on March 13, 1973 and the deputy commissioner denied this claim on September

*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)(1988).

9, 1981, as claimant failed to establish the existence of pneumoconiosis and total disability due to pneumoconiosis. Claimant filed a second claim on April 28, 1987, which was denied by the deputy commissioner as a duplicate claim on September 23, 1987. Claimant then requested a formal hearing. On February 23, 1990, the administrative law judge considered the claim pursuant to 20 C.F.R. Part 718, determined that claimant established approximately 33 years of coal mine employment, and that he established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge further found the evidence of record insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, benefits were denied. Claimant now appeals this denial. Employer contends, on cross-appeal, that the administrative law judge's Decision and Order denying benefits must be affirmed, and that the administrative law judge erred in finding that claimant established the existence of pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond in this case.[1]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. Stark v. Director, OWCP, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

In order to establish entitlement, a claimant must establish that the miner had pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 717.202, 718.203, 718.204, 718.205; Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111

[1]We note that the administrative law judge did not determine whether claimant established a material change in conditions pursuant to 20 C.F.R. §725.309. However, any error by the administrative law judge in this regard is harmless as the administrative law judge's determination that claimant established the existence of pneumoconiosis is clearly indicative of a material change in conditions. See Larioni v. Director, OWCP, 6 BLR 1-1276 (1984).

(1989). Failure to establish any of these elements precludes claimant's entitlement to benefits. See Anderson, supra.

In evaluating the evidence regarding total disability pursuant to 20 C.F.R. §718.204(c), the administrative law judge first considered the pulmonary function study evidence of record and properly determined that none of the pulmonary function studies yielded qualifying results. See Director's Exhibits 7, 27, Employer's Exhibits 2. The administrative law judge further properly found that the one qualifying blood gas study was outweighed by the three non-qualifying studies, one of which was also the most recent study. See Director's Exhibits 10, 27; Employer's Exhibits 2, 4; Clark v. Karst-Robbins Coal Co., 12 BLR 1-149 (1989); Mabe v. Bishop Coal Co., 9 BLR 1-67 (1986). Also, there is no evidence of cor pulmonale with right sided congestive heart failure in the record.

The administrative law judge then considered the medical opinion evidence of record and properly concluded that none of the physicians of record found that claimant was totally disabled due to pneumoconiosis.[2] See Director's Exhibits 4, 8, 9, 27; Employer's Exhibits 2, 4, 5. As a result, the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) is affirmed as they are supported by substantial evidence.[3] Moreover, as claimant has failed to establish total disability, a requisite element of entitlement under 20 C.F.R. Part 718, the administrative law judge's denial of benefits is affirmed. See Perry v. Director, OWCP, 9 BLR 1-1 (1986).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

[2]Dr. Khorshad found that claimant could continue his usual work as a car dropper or cleanup man. See Director's Exhibit 9; Employer's Exhibit 5. Dr. Zaldivar stated that claimant could perform arduous manual labor if required. See Employer's Exhibit 2. Dr. Fleer made no findings as to claimant's impairment. See Director's Exhibits 8, 27; Employer's Exhibits 4.

[3]As we affirm the administrative law judge's denial of benefits, we need not address employer's cross-appeal.

ROY P. SMITH,
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge