

BRB No. 97-0368 BLA

RALPH DALE BUZZARD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
LAUREL CREEK MINING COMPANY	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL-WORKERS'	)	
PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

Appeal of the Decision and Order on Remand of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

George D. Blizzard, II (Shaffer & Shaffer), Madison, West Virginia, for claimant.

Stephen E. Crist (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (94-BLA-0342) of Administrative Law Judge Stuart A. Levin 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). This case is before the Board for the second time.

Initially, the administrative law judge denied benefits based on his findings that the x-ray evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), and that the medical evidence failed to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). On appeal, the Board affirmed as unchallenged the administrative law judge's findings pursuant to Sections 718.202(a)(1) and 718.204(c)(1)-(3), but vacated the administrative law judge's finding pursuant to Section 718.204(c)(4) because he failed to consider a medical report from the West Virginia Occupational Pneumoconiosis Board (WVOPB), assessing a 25% pulmonary functional impairment. *Buzzard v. Laurel Creek Mining Co.*, BRB No. 94-4058 BLA (Sep. 29, 1995)(unpub.). The Board instructed the administrative law judge on remand to determine whether the WVOPB report was sufficiently documented and reasoned to be considered in his evaluation of the evidence pursuant to Sections 718.202(a)(4) and 718.204(c)(4).<sup>1</sup> *Buzzard*, slip op. at 3-4.

On remand, the administrative law judge concluded that the WVOPB report was not sufficiently documented or reasoned to establish total respiratory disability pursuant to Section 718.204(c)(4). Accordingly, he denied benefits for failure to establish total respiratory disability pursuant to Section 718.204(c). On appeal, claimant contends that the administrative law judge erred in his evaluation of the medical opinion evidence pursuant to Section 718.204(c)(4). Claimant further asserts that the administrative law judge erred by failing to address the existence of pneumoconiosis pursuant to Section 718.202(a)(4). The West Virginia Coal-Workers' Pneumoconiosis Fund (carrier), responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. § 921(b)(3), as incorporated into the Act by 30 U.S.C. § 932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Pursuant to Section 718.204(c)(4), claimant again contends that the administrative law judge erred in relying on Dr. Zaldivar's opinion that claimant's respiratory impairment was too mild to be of any clinical significance, because Dr. Zaldivar "misinterpret[ed] the AMA Guides. . . ." Claimant's Brief at 5. Because claimant raises the same arguments challenging the administrative law judge's evaluation of Dr. Zaldivar's opinion that were considered and rejected in the previous appeal, we decline to address those contentions

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<sup>1</sup> The Board rejected claimant's arguments attacking the administrative law judge's decision to credit Dr. Zaldivar's opinion that claimant's respiratory impairment was too mild to be of clinical significance. *Buzzard*, slip op. at 4.

here. [1994] Claimant's Brief at 4; *Buzzard*, slip op. at 4; [1996] Claimant's Brief at 4-5; see *Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989)(Brown, J., dissenting).

We note that on remand, the administrative law judge considered the WVOPB report as instructed. In assessing a "25% pulmonary functional impairment," the physicians of the WVOPB stated generally that the results of the September 13, 1993 non-qualifying<sup>2</sup> pulmonary function study "were significant." Director's Exhibit 3. The physicians, however, did not explain how the test results supported their impairment rating. In weighing this report, the administrative law judge found that "the WVOPB did not . . . reveal the methodology it employed in reaching its 25% pulmonary impairment rating. . . ." Decision and Order on Remand at 3. The administrative law judge concluded that "the impairment rating of the WVOPB is not adequately reasoned and lacks sufficient reliability to provide a reasonable basis here for concluding that claimant suffers from a 25% respiratory or pulmonary disability." *Id.* Inasmuch as an administrative law judge is given broad discretion to determine whether a medical opinion is well-reasoned, see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989), and the administrative law judge in this case has considered all of the medical opinion evidence on the issue of total respiratory disability, we affirm the administrative law judge's finding pursuant to Section 718.204(c)(4) as supported by substantial evidence.

Because claimant has failed to establish total respiratory disability, a necessary element of entitlement under Part 718, the denial of benefits is affirmed.<sup>3</sup> See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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<sup>2</sup> A "qualifying" pulmonary function study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1).

<sup>3</sup> In view of claimant's failure to establish total respiratory disability, we need not address claimant's contention that the administrative law judge erred in failing to consider the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge