BRB No. 06-0966 BLA

E.O.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 07/16/2007
	)	
EIGHTY FOUR MINING COMPANY	)	
	)	
Employer - Respondent	)	
	)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Lindsey M. Sbrolla (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (05-BLA-6015) of Administrative Law Judge Daniel L. Leland 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). In a Decision and Order dated August 23, 2006, the administrative law judge credited claimant with eighteen and one-half years of coal mine employment,[1]

[1] The record indicates that claimant's coal mine employment occurred in Pennsylvania. Director's Exhibits 3-6. Accordingly, this case arises within the

and found that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) and failed to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical opinion evidence relevant to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and the issue of total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief 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 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that she is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

After considering the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we affirm the administrative law judge's denial of benefits based on claimant's failure to establish total pulmonary or respiratory disability at 20 C.F.R. §718.204(b). All six of the pulmonary function studies of record were non-qualifying.[2] Thus, substantial evidence supports the administrative law judge's conclusion that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).[3] *Collins v. J & L Steel*, 21 BLR 1-181, 1-191 (1999); *Beatty v. Danri*

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jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] A "qualifying" pulmonary function or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B, C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[3] The administrative law judge mistakenly found that the July 21, 2005 pulmonary function study produced qualifying pre-bronchodilator values. Decision and Order at 8.

Corp., 16 BLR 1-11, 1-13-14 (1991); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-197-98 (1986), *aff'd on recon*, 9 BLR 1-236 (1987)(*en banc*); Decision and Order at 3, 8; Claimant's Exhibit 1; Director's Exhibit 13; Employer's Exhibits 1, 3, 7, 8.

Considering the blood gas study evidence of record, the administrative law judge properly found that as all of the blood gas studies are non-qualifying, claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). *Collins*, 21 BLR at 1-191 (1999); *Beatty*, 16 BLR at 1-13-14; Decision and Order at 4, 8; Claimant's Exhibit 4; Director's Exhibit 12; Employer's Exhibits 1, 3. Pursuant to 20 C.F.R. §718.204(b)(2)(iii), the administrative law judge further properly found that the record contains no medical evidence that claimant suffers from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 12.

Finally, considering the medical opinions of record, the administrative law judge noted that Drs. Celko, Schaaf, and Begley opined that claimant has a totally disabling respiratory impairment, while, by contrast, Drs. Fino and Renn opined that claimant has no respiratory impairment and is able to perform her usual coal mine work from a respiratory standpoint. Decision and Order at 8. Claimant argues that the administrative law judge did not provide a valid reason for finding that she is not totally disabled. Contrary to claimant's argument, the administrative law judge acted within his discretion in finding the opinions of Drs. Celko, Schaaf, and Begley outweighed by the better reasoned and documented opinions of Drs. Fino and Renn, whose opinions he found to be more consistent with the objective medical data, including the preponderance of the pulmonary function and blood gas studies. 20 C.F.R. §718.204(b)(2)(iv); *see Kertesz v. Director, OWCP*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); Decision and Order at 8; Claimant's Exhibits 1, 4, 8, 9; Director's Exhibits 9, 11; Employer's Exhibits 1-3, 6-8, 10, 11. Substantial evidence supports the administrative law judge's finding. It is therefore affirmed. Based on the foregoing, we affirm the administrative law judge's finding that the evidence fails to establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iv).

Because we affirm the administrative law judge's finding that the evidence fails to establish the existence of a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2), we need not address claimant's challenge to the finding that the

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However, any error by the administrative law judge in finding this study to be qualifying is harmless, as the administrative law judge ultimately found this study outweighed by the preponderance of the non-qualifying studies. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a). A finding of entitlement to benefits is precluded in this case. *See Trent*, 11 BLR at 1-27.

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