

BRB No. 05-0483 BLA

DOYLE JAMES ROBERTS)
)
 Claimant-Petitioner)
)
 v.)
)
 SHAMROCK COAL COMPANY,) DATE ISSUED: 10/13/2005
 INCORPORATED)
)
 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 – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (03-BLA-5805) of Administrative Law Judge Thomas F. Phalen, Jr. 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). The administrative law judge

accepted the parties' stipulation of at least thirty years of coal mine employment and found that the evidence was insufficient to establish either the existence of pneumoconiosis or the presence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his consideration of the medical evidence pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4) and 718.204(b)(2)(iv). Claimant also contends that the Director, Office of Workers' Compensation Programs (the Director), failed to comply with its statutory duty to provide claimant with a complete and credible pulmonary evaluation. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director responds that he met his obligation to provide claimant with a complete pulmonary evaluation.¹

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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 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*).

Pursuant to Section 718.204(b)(2)(iv), claimant states that Dr. Baker provided a well-reasoned opinion that claimant is totally disabled, and alleges that Dr. Baker's opinion "should not have been rejected by Judge Phalen for the reasons he provided." Claimant's Brief at 7. We disagree. The administrative law judge properly determined that Dr. Baker's statement that claimant is "occupationally disabled" because he should limit further dust exposure does not constitute an assessment of total respiratory disability. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); Director's Exhibit 12. The administrative law judge also properly noted that Dr.

¹ The administrative law judge's findings regarding the length of coal mine employment, that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(i)–(iii), and that neither Dr. Rosenberg nor Dr. Hussain diagnosed total disability at 20 C.F.R. §718.204(b)(2)(iv), are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Baker's mere designation of an impairment as a Class I respiratory impairment under the American Medical Association Guides to the Evaluation of Permanent Impairment "does not warrant a finding of total disability under the Act absent a well reasoned and well documented opinion that the standards of the Act have been met." Decision and Order at 16 n.7; *see Vargo v. Valley Camp Coal*, 7 BLR 1-901, 1-903 n.1 (1985)(observing that a Class I rating equated to zero impairment). Further, because the administrative law judge rationally found that Dr. Baker did not credibly diagnose a respiratory or pulmonary impairment, it was unnecessary for the administrative law judge to compare the exertional requirements of claimant's usual coal mine employment as a light-house attendant to the limitations in Dr. Baker's medical opinion.²

Moreover, contrary to claimant's contention, the administrative law judge was not required to consider claimant's age, education, and work experience in determining whether claimant is totally disabled. These factors "are not relevant to the issue of the existence of a respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv)." *White v. New White Coal Co.*, 23 BLR 1-1, 1-7 (2004). Furthermore, claimant's assertion that pneumoconiosis is a progressive disease that must have worsened, thus affecting his ability to perform his usual coal mine employment, provides no basis to disturb the administrative law judge's finding. The administrative law judge's findings as to the presence of a totally disabling respiratory or pulmonary impairment must be based solely on the medical evidence of record. *White*, 23 BLR at 1-7 n.8. We therefore affirm the administrative law judge's finding that total disability was not established pursuant to Section 718.204(b)(2)(iv).

Because claimant has not raised any meritorious allegations of error with respect to the administrative law judge's determination that the evidence of record is insufficient to establish total disability pursuant to Section 718.204(b)(2), an essential element of entitlement, we must affirm the administrative law judge's denial of benefits.³ *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

² Moreover, the administrative law judge seemed to indicate that Dr. Baker's report did not permit such a comparison, because Dr. Baker's "documentation of limitations on Claimant's residual exertional capacity necessary to perform his duties as a coal miner is virtually non-existent." Decision and Order at 17.

³ Because we have affirmed the denial of benefits based upon the administrative law judge's finding that claimant did not prove that he is totally disabled pursuant to Section 718.204(b)(2), we decline to reach claimant's arguments concerning the administrative law judge's weighing of the evidence under Section 718.202(a)(1), (a)(4). Error, if any, in the administrative law judge's findings as to the existence of pneumoconiosis would be harmless in light of our affirmance of his finding that total

Finally, claimant contends that because the administrative law judge did not credit a diagnosis of pneumoconiosis contained in Dr. Hussain's July 11, 2001 opinion provided by the Department of Labor, "the Director has failed to provide the claimant with a complete, credible pulmonary examination sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 5. The Director responds that claimant has been provided the complete pulmonary evaluation required by the Act and regulations. Director's Brief at 1-3.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lack credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); accord *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

The record reflects that Dr. Hussain conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. 20 C.F.R. §§718.101(a), 718.104, 725.406(a); Director's Exhibit 13. The administrative law judge did not find nor does claimant allege that Dr. Hussain's report was incomplete. With respect to the issue of total disability, the administrative law judge accepted, as "well-reasoned and well-documented" Dr. Hussain's opinion that claimant retains the respiratory capacity to perform the work of a coal miner, and claimant has not challenged this finding on appeal. Decision and Order at 17. Because Dr. Hussain's opinion regarding total disability--the element of entitlement upon which the administrative law judge based the denial of benefits--was complete and the administrative law judge did not find that it lacked credibility, a remand to the district director is not required. *See Hodges*, 18 BLR at 1-88 n.3.

disability was not established. *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge