

BRB No. 05-0222 BLA

DAVID RICHMOND)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
P G & H, INCORPORATED)	DATE ISSUED: 09/20/2005
)	
and)	
)	
WEST VIRGINIA COAL WORKERS’)	
PNEUMOCONIOSIS FUND)	
)	
Employer/Carrier-)	
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 Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, West Virginia, for claimant.

Robert Weinberger (West Virginia Coal Workers’ Pneumoconiosis Fund), Charleston, West Virginia, for employer.

Before: McGRANERY, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (2003-BLA-5974) of Administrative Law Judge Richard T. Stansell-Gamm rendered on a subsequent 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).¹ The administrative law judge found the newly submitted evidence of record sufficient to establish the existence of total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i), one of the elements previously adjudicated against him, thereby establishing a change in an applicable element of entitlement pursuant to 20 C.F.R. §725.309(d). Considering the case on the merits, the administrative law judge found the evidence of record sufficient to establish the existence of coal workers' pneumoconiosis and total disability at 20 C.F.R. §§718.202(a)(1), (2), 718.203, 718.204(b) but insufficient to establish that the disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to find that the opinion of Dr. Rasmussen established disability causation. Carrier responds, urging affirmance of the Decision and Order as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, (the Director) has filed a letter indicating that he will not participate in this appeal.

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 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. §§718.202, 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*).

Claimant contends that the administrative law judge should have found disability causation established based on Dr. Rasmussen's finding that claimant's significant exposure to coal mine dust contributed to his totally disabling respiratory impairment.

¹ The record indicates that claimant filed an application for benefits on February 11, 1998, which was denied by the district director on January 29, 1999, due to claimant's failure to establish any required element of entitlement. Director's Exhibit 1. Claimant filed this subsequent claim for benefits on March 13, 2001. Director's Exhibit 3.

In considering the medical opinions relevant to disability causation, the administrative law judge found that although Dr. Rasmussen provided the better reasoned opinion eliminating lung cancer as a factor in claimant's total disability, his opinion was "probatively deficient" because the doctor had not sufficiently explained the respective effects of coal dust and cigarette smoke. The administrative law judge concluded, therefore, the medical opinion evidence failed to establish that pneumoconiosis was a significant cause of claimant's totally disabling pulmonary impairment (Dr. Rasmussen was the only physician to attribute claimant's disabling respiratory impairment to coal mine employment) and that claimant had failed, therefore, to carry his burden of proof in establishing disability causation at Section 718.204(c).

A party challenging the administrative law judge's Decision and Order must do more than merely recite evidence favorable to his case; rather, the petitioner must identify any alleged error with specificity. 20 C.F.R. §802.210; *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); see *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986). In this case, claimant does no more than assert that Dr. Rasmussen's opinion establishes disability causation. He does not challenge the administrative law judge's reasons for finding Dr. Rasmussen's opinion "probatively deficient." Decision and Order at 19. Consequently, as claimant has failed to identify specific error with the administrative law judge's finding that Dr. Rasmussen's opinion provided insufficient analysis and as it is the only opinion of record linking claimant's disability to coal mine employment, we affirm the administrative law judge's finding that claimant has failed to establish disability causation. 20 C.F.R. §802.210; *Sarf*, 10 BLR at 120; *Fish*, 6 BLR 1-107; see *Cox*, 791 F.2d 445, 9 BLR 2-46.

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

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge