

U.S. Department of Labor

Benefits Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



BRB No. 19-0464 BLA

JAMES M. HEFFRON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
READING ANTHRACITE COMPANY	)	DATE ISSUED: 07/14/2020
	)	
and	)	
	)	
LACKAWANNA CASUALTY COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
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 Lauren C. Boucher,  
Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long),  
Ebensburg, Pennsylvania, for Claimant.

A. Judd Woytek (Marshall, Dennehey, Warner, Coleman & Goggin),  
Allentown, Pennsylvania, for Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and ROLFE,  
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge Lauren C. Boucher's Decision and Order Denying Benefits (2019-BLA-05050) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on July 18, 2017.

The administrative law judge found Claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), a necessary element of entitlement, and therefore denied benefits.

Claimant argues the administrative law judge erred in failing to determine whether he has sufficient coal mine employment necessary to invoke the Section 411(c)(4) presumption.<sup>1</sup> Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Benefits, has not filed a response brief.

The Benefit Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>2</sup> 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 establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing these elements when certain conditions are met, but failure to establish any one precludes an award of benefits. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

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<sup>1</sup> Under Section 411(c)(4) of the Act, a miner is presumed totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or surface coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

<sup>2</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as Claimant's coal mine employment occurred in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

### **Invocation of the Section 411(c)(4) Presumption – Total Disability**

The administrative law judge considered the pulmonary function studies, arterial blood gas studies, and medical opinions, and concluded Claimant did not establish by a preponderance of the evidence he is totally disabled due to a pulmonary or respiratory impairment.<sup>3</sup> 20 C.F.R. §718.204(b)(2)(i), (ii), (iv); see *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc); Decision and Order at 5-12.

Claimant contends the administrative law judge erred in failing to make a determination regarding the length of his coal mine employment, because it “could prejudice [him] in future claims or modification proceedings as courts may be inclined to apply collateral estoppel.” Claimant’s Brief at 4. We disagree. Collateral estoppel bars relitigation of a previously raised issue when, among other requirements, the issue was previously adjudicated and the determination of that issue was necessary to the outcome of the prior proceedings. See *Howard Hess Dental Lab, Inc. v. Dentsply Int’l Inc.*, 602 F.3d 237, 247-48 (3d Cir. 2010); see also *Ark. Coals, Inc. v. Lawson*, 739 F.3d 309, 320-21 (6th Cir. 2014). Here, a finding regarding the length of Claimant’s coal mine employment is not necessary to the outcome of the case, as denial is based on claimant’s failure to establish total disability. *Howard Hess Dental Lab*, 602 F.3d at 247-48.

Moreover, the administrative law judge did not render a determination to which collateral estoppel could apply. *Nat’l R.R. Passenger Corp. v. Pennsylvania Pub. Util. Comm’n*, 288 F.3d 519, 525 (3d Cir. 2002), quoting *Restatement (Second) of Judgments* § 27 (1980) (collateral estoppel may apply if the issue “is actually litigated and determined by a valid and final judgment”). She simply acknowledged a disagreement among the parties as to the number of years Claimant worked as a coal miner and stated the issue “remain[s] for adjudication.”<sup>4</sup> Decision and Order at 3.

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<sup>3</sup> The administrative law judge found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 4 n.3.

<sup>4</sup> The administrative law judge found Claimant was employed by Employer during calendar years 1978 through 1987 but did not render a finding as to the number of years Claimant was entitled, see 20 CFR 725.101(a)(32), or address Claimant’s contention raised at the hearing that he had additional coal mine employment not with Employer. See Decision and Order at 3; Hearing Transcript at 7-8.

As Claimant raises no allegation of error with respect to the administrative law judge's finding he is not totally disabled, an essential element of entitlement, we affirm that finding and the denial of benefits. *See* 20 C.F.R. §718.204(b)(2); *Trent*, 11 BLR at 1-27; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge