

BRB No. 99-0731 BLA

BARM COMBS)
)
)
 Claimant-Petitioner)
)
 v.)
)
 BUSH CREEK COAL COMPANY, INC.)
)
 and)
)
 AMERICAN BUSINESS & MERCANTILE)
 INSURANCE MUTUAL, INC.)
)
 Employer/ Carrier-)
 Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Rokententz, Administrative Law Judge, United States Department of Labor.

Barm Combs, Hindman, Kentucky, *pro se*.

Laura Metcoff Klaus (Arter & Hadden, LLP), Washington, D.C., for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH AND McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹, without the assistance of counsel, appeals the Decision and Order Denying Benefits on Remand (98-BLA-0060) of Administrative Law Judge Daniel J. Rokententz, denying benefits on a duplicate 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 administrative law judge found that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(c), and thereby, was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d). Accordingly, the administrative law judge denied the claim.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer, in response, asserts that the administrative law judge's finding that the evidence fails to establish the existence of a totally disabling respiratory impairment pursuant to Section 718.204(c) is supported by substantial evidence, and accordingly, it urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director), has filed a letter indicating that he will not respond to the instant appeal.

¹Claimant is Barm Combs, the miner, who has filed three applications for benefits with the Department of Labor (DOL). The first claim, filed on March 9, 1974, was withdrawn at the request of claimant. Director's Exhibit 51. The second claim, filed on February 6, 1989, was denied by DOL on July 21, 1989. Director's Exhibit 52. The instant claim, was filed on December 18, 1995. Director's Exhibit 1.

In order to establish entitlement to benefits in a living miner's claim, claimant must establish that the miner has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. Failure to prove any of these requisite elements of entitlement compels a denial of benefits. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In considering the newly submitted evidence of record the administrative law judge correctly applied the standard set forth in *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). With respect to the administrative law judge's finding at Section 718.204(c)(1)-(2), the administrative law judge correctly found that none of the four newly submitted pulmonary function studies of record, Director's Exhibits 9,10, 25, 49, or the three newly submitted blood gas studies of record, Director's Exhibits 14, 15, 49 produced qualifying values.² Hence, the administrative law judge found this evidence insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1)-(2), and we affirm the administrative law judge's finding. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tucker v Director v. OWCP*, 10 BLR 1-35 (1987); *Fields v. Island Creek Coal Corp.*, 10 BLR 1-19 (1987); *Winchester v. Director v. OWCP*, 9 BLR 1-177 (1986).

Pursuant to Section 718.204(c)(3), the administrative law judge correctly found that the record contains no evidence of cor pulmonale with right sided congestive heart failure. We affirm, therefore, the administrative law judge's finding at Section 718.204(c)(3). See *Newell v. Freeman United Coal Corp.*, 13 BLR 1-37 (1987).

²A “qualifying pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A “non-qualifying” study exceeds those values. See 20 C.F.R. §718.204(c)(1), (2).

With respect to the administrative law judge's finding at Section 718.204(c)(4), he stated that seven doctors submitted medical opinions. The administrative law judge correctly found that Drs. Stumbo, Director's Exhibits 25, 49; Sundaram, Director's Exhibits 25, 49, Employer's Exhibit 3; and Potter, Director's Exhibit 49, concluded that claimant was totally disabled due to a respiratory impairment while Drs. Dahhan, Director's Exhibits 11, 12; Wicker, Director's Exhibit 13; Branscomb, Employer's Exhibit 1; and Fino, Employer's Exhibit 2, concluded that claimant was not totally disabled from a respiratory standpoint and was capable of performing his usual coal mine work. Decision and Order at 11-12. The administrative law judge permissibly credited the opinions of Drs. Dahhan, Wicker, Branscomb and Fino over those of Drs. Stumbo, Sundaram and Potter on the basis that the former were better supported by the objective evidence of record. Decision and Order at 12; *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985). In addition, the administrative law judge permissibly concluded that the opinions of Drs. Stumbo, Sundaram, and Potter were not well-reasoned and not well-documented since their objective laboratory data does not support a total disability diagnosis, and they fail to provide sufficient reasoning to support their conclusions. *Id.*, *see Rowe v. Director, OWCP*, 710 F. 2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark, supra*; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988). We affirm, therefore, the administrative law judge's determination at Section 718.204(c)(4), as it is supported by substantial evidence and is in accordance with applicable law. We further affirm the administrative law judge's finding that the newly submitted evidence fails to establish a material change in conditions pursuant to Section 725.309(d), as it fails to establish total respiratory disability pursuant to Section 718.204(c). *See Ross, supra*; *Trent, supra*. As this finding precludes entitlement pursuant to the Part 718 regulations *see Trent, supra*; *Perry, supra*, we affirm the denial of benefits.³

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

³We need not address the administrative law judge's findings that the evidence fails to establish the existence of pneumoconiosis at Section 718.202(a), as they are rendered moot by our disposition of the case. *See Cochran v. Director, OWCP*, 16 BLR 1-101(1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge