

BRB No. 01-0852 BLA

LENVIL CHURCH)		
)		
Claimant-Petitioner)		
)		
v.)		
)		
BRENT COAL CORPORATION)	DATE	ISSUED:
)		
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 of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Lenvil Church, Big Rock, Virginia, *pro se*.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel,¹ the Decision and Order (00-BLA-0702) of Administrative Law Judge Pamela Lakes Wood 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).² Considering the claim on the

¹ Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge=s decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective

merits, the administrative law judge found the evidence of record insufficient to demonstrate the presence of a totally disabling respiratory impairment, a necessary element of entitlement. Accordingly, benefits were denied.

On appeal, claimant generally challenges the finding of the administrative law judge. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers= Compensation Programs (the Director), has filed a letter indicating that he is not participating in the appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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 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*)

After considering the administrative law judge=s Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge=s Decision and Order is supported by substantial evidence and contains no reversible error. Based on the preponderance of the non-qualifying results and the questionable validity of the single qualifying study, the administrative law judge rationally concluded that the pulmonary function study evidence did not support a finding of total disability. Decision and Order at 6; 20 C.F.R. '718.204(b)(2)(i). The administrative law judge also correctly found that because the blood gas studies were uniformly non-qualifying, they did not establish a totally disabling respiratory impairment, 20 C.F.R. '718.204(b)(2)(ii); Director=s Exhibits 8, 33, 49; Employer=s Exhibit 5, and that inasmuch as the record did not contain evidence of cor pulmonale with right-sided congestive heart failure, total disability was not established on that basis. 20 C.F.R. '718.204(b)(2)(iii). Turning to the

on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

medical opinion evidence, the administrative law judge correctly found that it failed to establish total disability. 20 C.F.R. ' 718.204(b)(2)(iv); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 154-155 (1998)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4, 1-6 (1986)(*en banc*); Decision and Order at 6-7; Director=s Exhibits 7, 8, 33, 49, 51; Employer=s Exhibit 5. Likewise, the administrative law judge correctly found that claimant=s testimony could not establish total disability. *Hicks, supra*; *Fields, supra*. We, therefore, affirm the administrative law judge=s finding that the evidence of record failed to establish total disability, a necessary element of entitlement. *Trent, supra*; *Gee, supra*; *Perry, supra*.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge