

BRB No. 05-0641 BLA

ALLEN RAY PRUETT)
)
 Claimant-Petitioner) DATE ISSUED: 04/26/2006
)
 v.)
)
 WORK SOURCE, INCORPORATED)
)
 and)
)
 WEST VIRGINIA COAL WORKERS')
 PNEUMOCONIOSIS FUND)
)
 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 Daniel F. Solomon,
Administrative Law Judge, United States Department of Labor.

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

Robert Weinberger (Workers' Compensation Defense Division), Charleston,
West Virginia, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (04-BLA-5994) of Administrative Law Judge Daniel F. Solomon rendered 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). After crediting claimant with at least 27 years of coal mine employment as stipulated by the parties, the administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). The administrative law judge, however, found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish total disability or total disability due to pneumoconiosis pursuant to Sections 718.204(b)(2)(iv) and 718.204(c). Employer/carrier responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.¹

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv) by according more weight to Dr. Hippensteel's opinion, that claimant is not totally disabled, as claimant contends that Dr. Hippensteel did not know the exertional requirements of claimant's usual coal mine employment. Both Drs. Hippensteel and Mullins rendered opinions regarding claimant's disability. Dr. Hippensteel stated that claimant "does not have [a] permanent pulmonary impairment from any cause that would keep him from going back to working at his previous job in the mines." Director's Exhibit 14 (Dr. Hippensteel's report at 4). Dr. Mullins stated that claimant has a "mild ventilatory impairment which would not have prevented performance of last job. [Arterial blood gas studies] would 100% disable miner by section Appendix C to part 718." Director's Exhibit 12 (Dr. Mullins's report at 4).

¹ Inasmuch as no party challenges the administrative law judge's findings that the evidence is sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a) and 718.203(b) but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 4-5, 7-10; Director's Exhibits 12-14.

We affirm the administrative law judge's finding that the evidence is insufficient to establish that claimant is totally disabled pursuant to Section 718.204(b)(2)(iv). The administrative law judge rationally accorded minimal weight to Dr. Mullins's opinion, and therefore found it insufficient to meet claimant's burden at Section 718.204(b)(2)(iv), because she stated that claimant has a mild ventilatory impairment which would not have prevented the performance of his last job, yet stated that his blood gas study results reflect that he would be unable to perform his usual coal mine employment. Decision and Order at 9; Director's Exhibit 12 (Dr. Mullins's report at 4).² An administrative law judge may decline to credit a medical opinion that is equivocal. See *U.S. Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). As the administrative law judge has properly determined that Dr. Mullins's opinion, the only opinion that arguably may be supportive of claimant's burden to establish total disability pursuant to Section 718.204(b)(2)(iv), is equivocal and therefore worthy of minimal weight, we need not address the administrative law judge's weighing of Dr. Hippensteel's opinion, as any error therein would be harmless. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382, 1-383 n. 4 (1983); Decision and Order at 9-10; Director's Exhibit 14.

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to Section 718.204(b)(2)(i)-(iv), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. See *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Consequently, we need not address claimant's remaining contentions regarding the administrative law judge's findings that the evidence is insufficient to establish total disability due to pneumoconiosis pursuant to Section 718.204(c). See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

² As the administrative law judge has provided a valid reason to accord Dr. Mullins's opinion with little or minimal weight, we need not address the administrative law judge's alternative reasons for not crediting Dr. Mullins's opinion. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382, 1-383 n. 4 (1983); Decision and Order at 9.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge