

BRB No. 97-1013 BLA

CHARLES VERNON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: _____
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Barry H. Joyner (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice),
Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0759) of Administrative Law Judge Fletcher E. Campbell, Jr. 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). Considering the merits of the claim under 20 C.F.R. Part 718, the administrative law judge found that the record evidence fails to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a). The administrative law judge then found that if claimant has coal workers' pneumoconiosis, claimant has shown that it is related to his coal mine employment under 20 C.F.R. §718.203(b). The administrative law judge further determined that the evidence fails to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the medical evidence of record establishes the existence of employment-related pneumoconiosis pursuant to Sections 718.202(a) and

718.203, and total disability due to pneumoconiosis under Section 718.204. Claimant urges the Board to reverse the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds and requests affirmance of the administrative law judge's denial of benefits based on claimant's failure to establish total respiratory or pulmonary disability under Section 718.204(c).

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 under Part 718, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose from his coal mine employment, and that he is totally disabled by the disease. 20 C.F.R. §§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*).

The administrative law judge found that the relevant evidence is insufficient to establish that claimant is totally disabled under Section 718.204(c)(1) - (4). Specifically, the administrative law judge properly found that the evidence fails to establish total disability under Section 718.204(c)(1) and (c)(2) because the pulmonary function studies and the sole blood gas study of record resulted in non-qualifying values,¹ Director's Exhibits 7, 9, 17, Claimant's Exhibit 1. He further correctly noted that there is no evidence that claimant suffers from cor pulmonale with right sided congestive heart failure, and thus total disability is not established under Section 718.204(c)(3).

Considering the three medical reports of record under Section 718.204(c)(4), the administrative law judge properly found that only Dr. Clarke opined that claimant is permanently and totally disabled due to his coal workers' pneumoconiosis, Director's Exhibit 17. The administrative law judge declined to credit Dr. Clarke's opinion because the administrative law judge found, within his discretion, that the opinion is not supported by objective evidence. See *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The administrative law judge also noted that Dr. Clarke's professional qualifications are absent

¹A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable values delineated in the tables at 20 C.F.R. 718, Appendix B, C, respectively. A "nonqualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (c)(2).

from the record. The administrative law judge next found that Dr. Dahhan's opinion, that claimant has a mild obstructive respiratory impairment and, overall, retains the respiratory capacity to continue his previous coal mine employment or comparable work, Director's Exhibit 8, is supported by a pulmonary function study and a blood gas study which both resulted in non-qualifying values, Director's Exhibits 7, 9. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). The administrative law judge also properly determined that Dr. Bushey did not render an opinion on whether or not claimant is disabled, Claimant's Exhibit 1. The administrative law judge thus properly found that claimant failed to establish that he is totally disabled by a preponderance of the medical opinion evidence, *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Inasmuch as the administrative law judge's finding that the evidence is insufficient to establish total disability under Section 718.204(c)(1) - (4) is rational and supported by substantial evidence, we affirm the administrative law judge's finding. In light of our affirmance of the administrative law judge's finding that claimant failed to establish total disability under Part 718, an essential element of entitlement, we decline to address claimant's arguments regarding the existence of pneumoconiosis, and further affirm the administrative law judge's denial of benefits, as a finding of entitlement is precluded. *Trent; supra; Perry, supra; see also Ondecko, supra.*²

²The administrative law judge accepted the concession of the Director that claimant established at least ten years of coal mine employment, Hearing Transcript at 9. See Decision and Order at 2, 5.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge