

BRB No. 02-0478 BLA

ANTHONY SANDERS	)	
	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KELLY’S CREEK RESOURCES	)	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 John C. Holmes, Administrative Law Judge, United States Department of Labor.

Nelson Layne, Tracy City, Tennessee, for claimant.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-1106) of Administrative Law Judge John C. Holmes 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).<sup>1</sup> Considering all the evidence of record the administrative law judge found that claimant established in excess of ten years of coal mine employment and the existence of pneumoconiosis, but failed to establish a totally disabling respiratory impairment. Accordingly, benefits were denied.<sup>2</sup>

<sup>1</sup> 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 on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup> Claimant’s first claim was denied on December 29, 1997 by Administrative Law

On appeal, claimant contends that the administrative law judge erred in finding that claimant failed to establish a totally disabling respiratory impairment. Employer has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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Judge Mollie W. Neal. Judge Neal found ten years of coal mine employment and the existence of pneumoconiosis established, but found that claimant failed to establish a totally disabling respiratory impairment. The Board affirmed the administrative law judge's denial of benefits. *Sanders v. Kelly's Creek Resources*, BRB No. 98-0619 BLA (Jan. 22, 1999). Claimant apparently filed a second claim within one year of this denial which was withdrawn on July 22, 1999. Director's Exhibit 18. The instant claim was filed on February 2, 2000. Director's Exhibit 1.

The administrative law judge noted that there was some confusion as to whether the claim before him should be considered a petition for modification or a duplicate claim, but concluded that a change in circumstances had taken place which required an analysis of all the evidence. Decision and Order at 4 (unpaginated). Claimant has not challenged the administrative law judge's finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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*).

Claimant contends that the administrative law judge erred in failing to find total disability established because he proffered the opinions of Drs. Dahhan and Zeid that claimant should not return to coal mine employment or have further coal dust exposure.<sup>3</sup> Claimant also points out that Dr. Dahhan diagnosed a totally disabling respiratory impairment and Dr. Zeid diagnosed a 10% to 25% impairment.

Contrary to claimant's argument, the administrative law judge properly found that a doctor's opinion that claimant should not return to coal mine employment or should avoid further exposure to coal dust is insufficient to establish total disability. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989). The administrative law judge also reasonably determined that the disability opinions of Drs. Dahhan and Zeid were undermined by their reliance on invalid pulmonary function studies. *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291, 1-1294 (1984); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984).

Moreover, inasmuch as claimant only recites to medical opinion evidence which he believes supports his case and has failed to, otherwise, allege any specific error made by the administrative law judge in the evaluation of the medical opinion evidence, we cannot further review the administrative law judge's findings, and must affirm them. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g Cox v. Director, OWCP*, 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

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<sup>3</sup> The administrative law judge's finding that the pulmonary function and blood gas study evidence does not establish total disability is affirmed as unchallenged on appeal. 20 C.F.R. §718.204(b)(2)(i), (ii); *Skrack, supra*; Decision and Order at 4-5 (unpaginated).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge