

BRB No. 06-0246 BLA

SILAS MULLINS)
)
 Claimant-Petitioner)
)
 v.)
)
 H & G MINING COMPANY) DATE ISSUED: 12/15/2006
)
 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 Denying Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-6576) of Administrative Law Judge Linda S. Chapman (the administrative law judge) on a subsequent claim¹ filed pursuant to the provisions of Title IV of the Federal Coal Mine

¹ Claimant initially filed a claim on September 15, 1988, but withdrew the claim on January 24, 1989. Director's Exhibit 1. Claimant filed a second claim on December 3, 1992, *id*, which was denied by Administrative Law Judge Sheldon R. Lipson on November 11, 1995 because claimant failed to establish the existence of pneumoconiosis. Subsequent to an appeal by claimant, the Board issued a Decision and Order affirming the denial of benefits. *Mullins v. H & G Mining Co.*, BRB No. 96-0194 BLA (Aug. 19,

Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found that the parties stipulated to a coal mine employment history of at least fifteen years and that the instant claim constituted a subsequent claim pursuant to 20 C.F.R. §725.309. Decision and Order at 2-3. The administrative law judge found that the newly submitted evidence established a change in an applicable condition of entitlement as such evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an element of entitlement previously adjudicated against claimant. Decision and Order at 15-21. Turning to the merits of entitlement, the administrative law judge found that while the evidence of record established the existence of pneumoconiosis pursuant to Section 718.202(a) and the presence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), Decision and Order at 21-22, the evidence failed to establish that claimant's totally disabling respiratory impairment was due to pneumoconiosis, *i.e.*, disability causation, pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in not finding disability causation established at 20 C.F.R. §718.204(c) based on the opinions of Drs. Baker and Rasmussen. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any element of entitlement precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Claimant contends that the administrative law judge erred in failing to find disability causation established based on the opinions of Drs. Baker and Rasmussen.

1996). *Id.* Claimant took no further action until the filing of the instant claim on June 7, 2002. Director's Exhibit 3. On April 12, 2005, Administrative Law Judge Linda S. Chapman issued the Decision and Order Denying Benefits from which claimant now appeals.

While the administrative law judge acknowledged that the opinions of Drs. Baker and Rasmussen attributed claimant's total disability to coal mine employment, the administrative law judge found that Dr. Baker's opinion failed to establish the link between coal mine employment and total respiratory disability because the doctor "did not explain how the [c]laimant's exposure to coal dust played a part in his respiratory impairment." Decision and Order at 22. Similarly, the administrative law judge found that Dr. Rasmussen, while stating that coal mine dust exposure was a cause of claimant's disabling lung disease, failed to explain how "claimant's test results were consistent with a finding of coal mine dust induced lung disease, or how the finding in "medical articles specifically applied to ... [c]laimant's test results and findings." Decision and Order at 23. The administrative law judge concluded, therefore, that because the doctor "did not describe the specific findings in ... [c]laimant's case that were consistent with the studies in these articles, or how the mechanics of [claimant's] respiratory were consistent with coal dust exposure as a causative factor[.]" his opinion was entitled to little weight. Decision and Order at 23.² Accordingly, the administrative law judge concluded that these opinions along with the opinions of Drs. Repsher and Rosenberg, who found that claimant's total disability was not due to coal mine employment, failed to establish disability causation.

Other than citing to the favorable opinions of Drs. Baker and Rasmussen, claimant does not delineate how the administrative law judge erred in her analysis of their opinions or the opinions of other physicians.³ Claimant fails to allege any specific error in the administrative law judge's findings or legal conclusions. Claimant has failed, therefore, to provide a basis upon which the Board may review the administrative law judge's findings. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish disability causation at 20 C.F.R. §718.204(c).⁴ Because we affirm the administrative law judge's finding that the evidence

² While discussing Dr. Rasmussen's opinion, the administrative law judge also refers to Dr. Rasmussen as "Dr. Forehand". Decision and Order at 23. As it is clear that the administrative law judge is discussing Dr. Rasmussen's opinion and there is no opinion from Dr. Forehand in the record, this was clearly a typographical error and harmless to the administrative law judge's resolution of the case. Decision and Order at 23.

³ Claimant does not challenge the administrative law judge's findings that the opinions of Drs. Repsher and Rosenberg fail to attribute claimant's disability to coal mine employment. *See* Decision and Order at 23.

⁴ Section 718.204(c)(1) provides that a miner shall be considered totally disabled

fails to establish the existence of disability causation, a requisite element of entitlement, we must affirm the denial of benefits. *See Anderson*, 12 BLR 1-111; *Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

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

BETTY JEAN HALL
Administrative Appeals Judge

due to pneumoconiosis if pneumoconiosis, as defined in Section 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it: (i) Has a materially adverse effect on the miner's respiratory or pulmonary condition, or (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment. 20 C.F.R. §718.204(c)(1)(i), (ii).