

BRB No. 06-0610 BLA

RAYMOND LOWE )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 ) DATE ISSUED: 12/29/2006  
 ROMAK CONSTRUCTION )  
 )  
 and )  
 )  
 LIBERTY MUTUAL INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 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 Larry Price,  
Administrative Law Judge, United States Department of Labor.

Raymond Lowe, Prestonburg, Kentucky, *pro se*.

Francesca L. Maggard, Esq. (Lewis and Lewis), Hazard, Kentucky, for  
employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (04-BLA-5777) of Administrative Law Judge Larry Price 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). The administrative

law judge credited claimant with eleven years of coal mine employment.<sup>1</sup> The administrative law judge found that the medical evidence did not establish that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer has not responded to claimant's appeal, and the Director, Office of Workers' Compensation Programs, has indicated that he will not file a substantive response to claimant's 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. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

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 one of these elements precludes entitlement. *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).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered pulmonary function studies dated November 20, 2002 and June 28, 2003. Decision and Order at 3-5. The administrative law judge correctly found that both pulmonary function studies were non-qualifying.<sup>2</sup> *Id.* at 4; Director's Exhibits 9, 21. Because substantial evidence supports the administrative law judge's finding that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(i), the finding is affirmed.

Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered two blood gas studies dated November 20, 2002 and June 28, 2003, and found their

---

<sup>1</sup> The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibits 3, 4, 22. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

<sup>2</sup> A "qualifying" pulmonary function or blood gas study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. *See* 20 C.F.R. §718.204(b)(2)(i),(ii). A "non-qualifying" study exceeds those values.

results insufficient to meet the disability criteria. Decision and Order at 4; Director's Exhibits 9, 21. The record reflects that both studies were non-qualifying at rest and with exercise, and that they were interpreted as "normal" by the physicians who administered them. Director's Exhibits 9, 21. Because substantial evidence supports the administrative law judge's finding that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(ii), the finding is affirmed.

Pursuant to 20 C.F.R. §718.204(b)(2)(iii), the administrative law judge correctly found that the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Accordingly, that method of establishing total disability is inapplicable to this claim.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered medical reports from Drs. Baker and Dahhan stating that claimant is not totally disabled. Director's Exhibits 9, 21. Based on a "normal" blood gas study and a pulmonary function study revealing a "mild obstructive defect," Dr. Baker concluded that claimant has "mild or minimal" impairment, and retains the respiratory capacity to perform coal mine employment. Director's Exhibit 9 at 3-4. Dr. Dahhan reported that claimant has a "normal" blood gas study and "adequate pulmonary function values despite poor effort" on a pulmonary function study. Director's Exhibit 21 at 2. Based on his evaluation, Dr. Dahhan concluded that claimant "retains the respiratory capacity to continue his previous coal mining work or job of comparable physical demand . . ." Director's Exhibit 21 at 2. Consequently, substantial evidence supports the administrative law judge's finding that the medical reports did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Finally, the administrative law judge noted claimant's testimony as to his increasing shortness of breath and its effect on his ability to walk. Hearing Transcript (Tr.) at 13-15. The administrative law judge also considered claimant's testimony that because of his breathing problems, he could not perform his last coal mine job. Tr. at 13-14, 16; Decision and Order at 5. However, as the administrative law judge properly noted, in a living miner's claim lay testimony is generally insufficient to establish total disability unless it is corroborated by medical evidence. *Madden v. Gopher Mining Co.*, 21 BLR 1-122, 1-124-25 (1999). In this case, substantial evidence supports the administrative law judge's finding that the medical evidence did not establish total disability. We therefore affirm the administrative law judge's finding that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2).

Because claimant failed to establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2), a necessary element of entitlement in a miner's claim under Part 718, we affirm the denial of benefits. *See Anderson*, 12 BLR at 1-112.

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

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge