

BRB No. 00-0499 BLA

LINDON ELVIN ROCK)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
PEABODY COAL COMPANY)	
)	
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 Rudolf L. Jansen, Administrative Law Judge,
United States Department of Labor.

Lindon Elvin Rock, Francisco, Indiana, *pro se*.

Laura Metcoff Klaus (Arter & Hadden, LLP), Washington, D.C., for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON,
Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (97-BLA-0205) of Administrative Law Judge Rudolf L. Jansen 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).¹ The administrative law judge credited claimant with twenty-two years of coal mine employment, and found the evidence of record

¹This claim was filed on September 7, 1995. Director=s Exhibit 1. 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 65 Fed. Reg. 80,045-80,107 (2000) (to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

insufficient to establish the existence of pneumoconiosis and a totally disabling respiratory impairment pursuant to 20 C.F.R. ' 718.202(a)(1)-(4) and 718.204(c)(2000). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge=s denial of benefits. In response, employer argues that the administrative law judge=s denial of benefits is supported by substantial evidence. The Director, Office of Workers= Compensation Programs, has declined to file a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge=s Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the 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).

After consideration of the administrative law judge=s Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and there is no reversible error contained therein. The administrative law judge correctly found that none of the pulmonary function studies yielded qualifying values, except the March 12, 1993 study.² Decision and Order at 15; Director=s Exhibits 9, 36, 39; Claimant=s Exhibit 2; Employer=s Exhibit 46. Since the non-qualifying studies were administered subsequent to the March 12, 1993 study, the administrative law judge properly reasoned that the only qualifying pulmonary function study evidence was not supportive of a finding of total disability. Decision and Order at 15. The administrative law judge also properly found that none of the blood gas studies of record yielded qualifying values. Decision and Order at 7; Director=s Exhibits 12, 27, 39; Claimant=s Exhibit 1; Employer=s Exhibit 46. Further, the administrative law judge correctly found that the record is devoid of any evidence regarding the existence of cor pulmonale with right sided congestive heart failure. Finally, the administrative law judge considered the opinions of Dr. Cohen, that claimant is totally disabled from a respiratory standpoint, Dr. Carandang, that attributed 30% of claimant=s impairment to chronic obstructive pulmonary disease, and the

²The October 5, 1995, April 25, 1996, February 3, 1998 and March 4, 1999 pulmonary function studies are non-qualifying. A Aqualifying@ pulmonary function study or arterial blood gas study yields values which are equal to or less than the applicable table values, *i.e.* Appendices B and C of Part 718. *See* 20 C.F.R. ' 718.204(c)(1) and (c)(2)(2000). A non-qualifying@ study yields values which exceed the requisite table values.

contrary opinions of Drs. Selby, Renn, Hippenstel and Goodman. Decision and Order at 16; Director=s Exhibit 11; Claimant=s Exhibits 1, 12, 14; Employer=s Exhibits 25, 27, 28, 33, 39, 45, 46. The administrative law judge acknowledged the superior qualifications in internal medicine and pulmonary diseases of Drs. Cohen, Selby, Renn, Hippensteel and Goodman, and permissibly concluded that there was no reason to give more weight to Dr. Cohen=s opinion than is given to the contrary opinions of Drs. Selby, Renn, Hippensteel and Goodman. *Peabody Coal Creek Co. v. Director, OWCP*, 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992); Decision and Order at 16. Moreover, the administrative law judge, within a proper exercise of his discretion, gave greater weight to the opinions of Drs. Selby and Renn as they were supported by the underlying documentation. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988); Decision and Order at 16. Therefore, we affirm the administrative law judge=s finding that the medical opinion evidence is insufficient to establish a totally disabling respiratory or pulmonary condition. *See* 20 C.F.R. ' 718.204(c)(4)(2000).

Inasmuch as claimant has failed to establish total disability under Section 718.204(c)(1)-(4) or 65 Fed. Reg. 80,049 to be codified at 20 C.F.R. ' 718.204(b), a requisite element of entitlement, an award of benefits is precluded under 20 C.F.R. Part 718. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent, supra*; *Perry, supra*. Therefore, we need not address the administrative law judge=s findings under Sections 718.202(a) and 718.203(b)(2000). *Endrezzi v. Bethlehem Mines Corp.* 8 BLR 1-11 (1985).

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge