

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 18-0133 BLA

LARRY W. GOBLE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
SOUTHERN OHIO COAL COMPANY)	DATE ISSUED: 02/07/2019
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for claimant.

J. Lawson Johnston (Dickie, McCamey & Chilcote, P.C.), Pittsburgh, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2015-BLA-5524) of Administrative Law Judge Steven D. Bell, denying benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on October 10, 2013.¹

The administrative law judge accepted the parties' stipulation that claimant had 10.34 years of coal mine employment,² insufficient to invoke the rebuttable presumption of total disability due to pneumoconiosis.³ 30 U.S.C. §921(c)(4) (2012). Turning to whether claimant could affirmatively establish his entitlement to benefits under 20 C.F.R. Part 718, the administrative law judge found that the new evidence demonstrated the existence of clinical and legal pneumoconiosis, establishing that one of the applicable conditions of entitlement had changed since the date the denial of the miner's prior claim became final. 20 C.F.R. §725.309. Consequently, he considered claimant's 2013 claim on the merits. After finding claimant entitled to the presumption that his clinical pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), the administrative law judge found that the evidence did not establish that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, he denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R.

¹ Claimant's initial claim for benefits, filed on July 26, 1993, was denied by the district director on October 19, 1993 because claimant failed to establish any element of entitlement. Director's Exhibit 1.

² The record reflects that claimant's coal mine employment was in Ohio. Director's Exhibit 4. 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).

³ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

§718.204(b)(2)(iv). Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.⁴

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 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 an award of benefits. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. See 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. See *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

Claimant generally asserts that the administrative law judge did not address "whether [claimant] had proven disability by a well[-]reasoned medical report" pursuant to 20 C.F.R. §718.204(b)(2)(iv). Claimant's Brief at 4. Contrary to claimant's contention, the administrative law judge considered the medical opinions of Drs. Brawner and Mutchler. The administrative law judge found that, although Dr. Brawner opined that claimant "appears" to have severe impairment in terms of being able to perform his last coal mine employment, she did not "directly state whether . . . [c]laimant would be able to perform his previous coal mine duties from a respiratory standpoint, or if so, her basis for that conclusion." Decision and Order at 14; Director's Exhibit 10. Conversely, the

⁴ Because it is unchallenged on appeal, we affirm the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

administrative law judge noted that Dr. Mutchler opined that from a pulmonary standpoint, claimant could perform the heavy exertional labor of his work. Decision and Order at 14; Employer's Exhibits 1-3. Weighing the medical opinion evidence, the administrative law judge found that it did not establish total disability:

I credit the opinions of Dr. Mutchler, who reviewed all of the evidence of record, and concluded that, from a respiratory standpoint, . . . [c]laimant is capable of performing the exertional requirements of his previous coal mine work. I[n] contrast, Dr. Brawner considered only the results of her own testing, and none of those of Dr. Mutchler, which reflected . . . [c]laimant's resting hypoxemia had resolved. Her opinion is equivocal, and not clearly directed at the question of whether . . . [c]laimant retains the pulmonary capacity to return to his previous coal mine job.

Decision and Order at 15.

Claimant alleges no specific error in regard to the administrative law judge's weighing of the medical opinion evidence on the issue of total disability. *See Cox v. Benefits Review Board*, 791 F.2d 445 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Because claimant provides the Board with no basis upon which to review the administrative law judge's findings, we affirm the administrative law judge's determination that the medical opinion evidence does not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See* 20 C.F.R. §802.211(b); *Sarf*, 10 BLR at 1-120.

In light of our affirmance of the administrative law judge's findings that the evidence does not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), an essential element of entitlement under 20 C.F.R. Part 718, we affirm the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge