

BRB No. 88-3387 BLA

MILLARD SKALLA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

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

Millard Skalla, Nanticoke, Pennsylvania, pro se.  
Richard A. Seid (Robert P. Davis, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

Before: STAGE, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

Claimant,<sup>1</sup> without legal representation, appeals the Decision and Order (87-

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<sup>1</sup> We note that claimant appeared, without the assistance of counsel, at the hearing before the administrative law judge. Based on the facts of the instant case, we hold that the hearing before the administrative law judge was properly conducted.

BLA-3795) of Administrative Law Judge Robert D. Kaplan 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). The administrative law judge reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with at least eighteen years of qualifying coal mine employment, but found that claimant failed to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202 or total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appeals, contending that the evidence establishes entitlement under Part 718. The Director, Office of Workers' Compensation Programs, responds, urging affirmance.<sup>2</sup>

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See Shapell v. Director, OWCP, 7 BLR 1-304 (1984).

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(Supp. V 1987).

<sup>2</sup> The administrative law judge's finding with respect to length of coal mine employment, which is not adverse to claimant, is affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

In an appeal by a claimant filed without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. 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 rational, supported by substantial evidence, and in accordance with 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).

In order to establish entitlement to benefits pursuant to Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

Turning to the issue of total disability, the administrative law judge properly found that the pulmonary function study and blood gas study<sup>3</sup> evidence of record

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<sup>3</sup> On appeal, claimant maintains that he did not receive a full pulmonary evaluation as a stress test was not conducted and blood gas study results on exercise were not obtained. The record reflects, however, that Dr. Talati opined that claimant could not undergo exercise on May 1, 1987, when a resting blood gas sample was obtained, or on May 6, 1987, when the stress test was rescheduled, in view of claimant's high blood pressure. See Director's Exhibit 9. Dr. Talati further indicated, in his report of June 2, 1987, that claimant was physically unable to undergo a blood gas test with exercise due to high blood pressure, see Director's Exhibit 8, thus claimant's argument is without merit.

was non-qualifying,<sup>4</sup> and that the record contained no evidence of cor pulmonale with right-sided congestive heart failure, thus claimant failed to establish total disability pursuant to Section 718.204(c)(1) - (c)(3). Decision and Order at 6, 7; Director's Exhibits 7, 9. The administrative law judge further rationally found that claimant failed to establish total disability pursuant to Section 718.204(c)(4), as the sole medical report of record, submitted by Dr. Talati, explicitly stated that claimant had no pulmonary impairment. Decision and Order at 7; Director's Exhibit 8; see generally Gee v. W.G. Moore and Sons, 9 BLR 1-4 (1986). The administrative law judge's findings pursuant to Section 718.204(c) are supported by substantial evidence, and we hereby affirm them. Inasmuch as claimant has failed to establish a requisite element of entitlement to benefits, i.e., total disability, claimant is precluded from entitlement to benefits under Part 718, and we need not address the remaining issues of whether claimant established the existence of pneumoconiosis or causation. See Trent, supra.

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

SO ORDERED.

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<sup>4</sup> A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values.

BETTY J. STAGE, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge