

BRB No. 89-0410 BLA

CLAIR CONRAD)
)
 Claimant-Petitioner)
)
 v.)
)
 GREENWICH COLLIERIES)
)
 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 Nicholas J. Laezza, Administrative Law Judge, United States Department of Labor.

Daniel G. Walter (Pawlowski, Creany & Tulowitzki), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose), Johnstown, Pennsylvania, for employer.

Before: DOLDER and McGRANERY, Administrative Appeals Judges, and FEIRTAG, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (87-BLA-1733) of Administrative

Law Judge Nicholas J. Laezza 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

*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).

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 twenty-four years of qualifying coal mine employment, but found that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1) - (a)(4). The administrative law judge further found that although the evidence established the existence of a totally disabling respiratory or pulmonary impairment under 20 C.F.R. §718.204(c), claimant failed to establish that his disability was due to pneumoconiosis under 20 C.F.R. §718.204(b).¹ Accordingly, benefits were denied.

Claimant appeals, challenging the administrative law judge's findings with respect to causation under Section 718.204(b). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not participated in this

¹ The administrative law judge did not specifically cite the regulation at Section 718.204(b), but the appropriate section may be inferred from the administrative law judge's findings. See generally Wetzell v. Director, OWCP, 8 BLR 1-139, 1-140 (1985).

appeal.²

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 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 under 20 C.F.R. 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).

Claimant's sole argument on appeal is that the administrative law judge, in finding that the evidence was insufficient to establish that claimant's disability was due to pneumoconiosis, failed to consider the opinions of Drs. Malhotra, Klemens and Sabo under the proper standard, i.e. that pneumoconiosis is a substantial

² The administrative law judge's findings under Section 718.204(c) and with regard to length of coal mine employment are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

contributor to disability, as opposed to being the sole cause of disability. See Bonessa v. United States Steel Corp., 884 F.2d 726, 13 BLR 2-23, 2-27 (3d Cir. 1989). Claimant's argument is without merit. In evaluating the medical opinions of record, the administrative law judge determined that the evidence was mixed; whereas Drs. Malhotra, Klemens and Sabo each attributed claimant's disability to coal dust exposure, the majority of claimant's examining physicians, i.e. Drs. Lantos, Katter, Gress and Pickerill, supported by the consultative opinion of Dr. Fino, found that claimant's disability was due to his heart medication and/or smoking history and was unrelated to coal mine employment exposure. Consequently, the administrative law judge acted within his discretion in finding that claimant failed to meet his burden of establishing total disability due to pneumoconiosis under Section 718.204(b) by a preponderance of the evidence. See generally Anderson, supra at 1-113; Brown v. Director, OWCP, 7 BLR 1-730 (1985). We hereby affirm the administrative law judge's findings under Section 718.204(b) as they are supported by substantial evidence. Furthermore, we affirm the administrative law judge's findings under Section 718.202, that pneumoconiosis was not established, as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983). Inasmuch as claimant has failed to establish either the existence of pneumoconiosis or that his total disability is due to pneumoconiosis, claimant is precluded from entitlement to benefits under Part 718. See Trent, supra.

Accordingly, the administrative law judge's Decision and Order denying

benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ERIC FEIRTAG
Administrative Law Judge