

BRB No. 94-2276 BLA

JULIUS ROARK )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 NALLY & HAMILTON ENTERPRISES )  
 )  
 and )  
 )  
 OLD REPUBLIC INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Sirina Tsai (Arter & Hadden), Washington, D.C., for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (92-BLA-0693) of Administrative Law Judge Ralph A. Romano 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 credited claimant with nineteen years of coal mine employment pursuant to the parties' stipulation, and considered the claim pursuant to the provisions of 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis or total respiratory disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred by finding the x-ray and medical opinion evidence of record insufficient to establish the existence of pneumoconiosis. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, (the Director) has declined to participate in this appeal.

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 by 30 U.S.C. § 932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The administrative law judge's finding that claimant failed to establish total disability at Section 718.204(c) is affirmed as unchallenged on appeal and supported by substantial evidence. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). At Section 718.204(c)(1) and (2), nine of the ten pulmonary function studies of record and all of the blood gas studies yielded non-qualifying values.<sup>1</sup> See Director's Exhibits 8-12, 14, 17-19, 45. There was no evidence in the record of cor pulmonale with right-sided congestive heart failure to be considered at Section 718.204(c)(3). At Section 718.204(c)(4), ten of the eleven physicians who addressed respiratory disability concluded that claimant is not totally disabled. Director's Exhibits 13-16, 45, 46; Employer's Exhibits 6-8. Because claimant has failed to establish total respiratory disability pursuant to Section 718.204(c), a necessary element of

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<sup>1</sup> A "qualifying" objective 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. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (c)(2). We note that none of the pulmonary function studies yields qualifying values when evaluated using claimant's height of seventy-five inches found by the administrative law judge. See Decision and Order at 10.

entitlement under Part 718, we affirm the denial of benefits, and decline to address claimant's arguments regarding Section 718.202(a).<sup>2</sup> See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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<sup>2</sup> We note that at Section 718.202(a)(1) the administrative law judge considered the earlier positive readings as well as the differences in the readers' qualifications, and the x-ray re-readings do not appear to be unduly repetitious. See *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993).

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

\_\_\_\_\_ JAMES F.  
BROWN  
Administrative Appeals Judge