

BRB No. 96-0294 BLA

JAMES D. PLYLER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
BLOUNT CONTRACTORS)	
)	
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 Quentin P. McColgin, Administrative Law Judge, United States Department of Labor.

Robert Weaver (Nakamura & Quinn), Birmingham, Alabama, for claimant.

C. William Mangum (J. Davitt McAteer, Acting 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: SMITH, BROWN, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-0613) of Administrative Law Judge Quentin P. McColgin 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.

¹ Claimant is James D. Plyler, the miner, whose claim for benefits filed on January 27, 1994 was initially denied on July 12, 1994. Director's Exhibits 1, 15. After an informal conference, the claim was again denied on December 5, 1994. Director's Exhibit 26. Claimant contested the denial and requested a hearing. Director's Exhibit 27.

§901 *et seq.* (the Act). Pursuant to the parties' stipulation, the administrative law judge credited claimant with sixteen and one-half years of coal mine employment. He determined that claimant had one dependent and that employer was the responsible operator,² and found the existence of pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §718.202(a) and 718.203(b). The administrative law judge concluded, however, that the evidence failed to establish a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c) and, accordingly, denied benefits.

On appeal, claimant challenges the administrative law judge's weighing of the evidence pursuant to Section 718.204(c). Employer has not responded to this appeal. The Director, Office of Workers' Compensation Programs (the Director) responds, urging affirmance.³

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

Claimant contends that his uncontradicted testimony establishes that he is totally disabled. Claimant's Brief at 3. Contrary to claimant's contention, lay testimony without corroborating medical evidence is insufficient to establish total respiratory disability in a living miner's claim. 20 C.F.R. §718.204(d)(2); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). The administrative law judge found that the record contains no medical evidence of total respiratory disability.

² The Director, Office of Workers' Compensation Programs (the Director), conceded that because employer's insurer is insolvent, the Black Lung Disability Trust Fund would be liable for benefits should they be awarded. Hearing Transcript at 7.

³ We affirm as unchallenged on appeal the administrative law judge's findings regarding length of coal mine employment, dependency, responsible operator status, and pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Pursuant to Section 718.204(c)(1)-(3), the administrative law judge noted that the February 24, 1994 pulmonary function and blood gas studies were non-qualifying⁴ and there was no evidence in the record of cor pulmonale with right-sided congestive heart failure. Director's Exhibits 10, 12; Decision and Order at 4. At Section 718.204(c)(4), the administrative law judge summarized Dr. Rusakoff's opinion that, based on the examination findings and normal objective test results, claimant had "no impairment of the respiratory system that would prevent him from performing his last coal mine job." Director's Exhibit 11; Decision and Order at 4-5.

The administrative law judge concluded that Dr. Russakoff's opinion--the only one of record--"does not support a finding of total disability." Decision and Order at 5. The administrative law judge noted claimant's testimony regarding the exertional requirements of his job as a drill operator at a strip mine, but found that "even if I were to conclude from the claimant's description of his last coal mine employment that it involved heavy labor (TR. 11-14), no physician has found any limitation⁵ to prevent the claimant from performing that work." Decision and Order at 5.

Inasmuch as the administrative law judge properly found the record to be devoid of medical evidence of respiratory impairment, see *Vargo v. Valley Camp Coal Co.*, 7 BLR 1-901 (1985), we affirm the administrative law judge's finding pursuant to Section 718.204(c). See *Lollar v. Alabama By-Products Corp.*, 893 F.2d 1258, 13 BLR 2-277 (11th Cir. 1990); *Jordan v. Benefits Review Board*, 876 F.2d 1455, 12 BLR 2-371 (11th Cir. 1989). Because claimant has failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c), a necessary element of entitlement under Part 718, we affirm the denial of benefits. See *Trent, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

⁴ 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).

⁵ Dr. Russakoff recorded no physical limitations in his examination report, noting that claimant "denies any . . . limitations in his activity." Director's Exhibit 11.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

_____JAMES F. BROWN
Administrative Appeals Judge

_____REGINA C.
McGRANERY
Administrative Appeals Judge