

BRB No. 99-1080 BLA

RONALD E. HALCOMB)
)
 Claimant-Petitioner)
)
 v.)
)
 CUMBERLAND RIVER COAL COMPANY) DATE ISSUED:
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 and)
)
 ARCH MINERAL CORPORATION)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-1161) of Administrative Law Judge Joseph E. Kane 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 fifteen and three-quarters years of coal mine employment and determined that employer was the responsible operator in this claim. Based on the filing date of August 11, 1997, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis or the presence of a totally disabling respiratory impairment at 20 C.F.R. §§718.202(a)(1)-(4),

718.204(c)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally challenges the findings of the administrative law judge. Employer is not participating in this appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond.¹

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. §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 in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Contrary to claimant's assertions, the administrative law judge properly found that the opinions of Drs. Baker, Bushey and Lockey failed to establish a totally disabling respiratory impairment at Section 718.204(c). Director's Exhibits 11, 12, 21; *see Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'g* 16 BLR 1-11 (1991); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-16 (1994); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); Director's Exhibits 11, 21. *See Taylor v. Evans and Gambrel Company, Inc.*, 12 BLR 1-83, 1-88 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 13 BLR 1-46 (1986), *aff'd on recon.* 9 BLR 1-104 (1986)(*en banc*). We, therefore, affirm the denial of benefits as claimant has failed to establish a necessary element of entitlement, and we need

¹ We affirm the findings of the administrative law judge on the length of coal mine employment, on the designation of employer as the responsible operator, and at 20 C.F.R. §§718.202(a)(2), (3) and 718.204(c)(1)(2), (3), as unchallenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

not address claimant's arguments regarding the existence of pneumoconiosis at Section 718.202(a)(1), (4). *See Trent, supra; Gee, supra.*

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge