

BRB No. 04-0120 BLA

WILLIAM L. SMITH)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CRACKSTEEL MINING COMPANY)	DATE ISSUED: 07/14/2004
)	
and)	
)	
KENTUCKY COAL PRODUCERS SELF- INSURANCE FUND)	
)	
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 - Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

William L. Smith, Evarts, Kentucky, *pro se*.

John T. Chafin (Chafin & Davis, P.S.C.), Prestonsburg, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (2002-BLA-0384) of Administrative Law Judge Thomas F. Phalen, Jr. rendered on a duplicate 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).¹ The administrative law judge found, and the parties stipulated to, at least sixteen years of coal mine employment. The administrative law judge further found that the newly submitted evidence was sufficient to establish total disability, an element of entitlement previously adjudicated against claimant. Specifically, the administrative law judge found that the newly submitted pulmonary function and blood gas study evidence and the medical opinion evidence, compared to the evidence submitted in the prior claim, showed that claimant's respiratory condition had worsened and established a totally disabling respiratory impairment. The administrative law judge, therefore, found that a material change in conditions was established pursuant to *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994); *Flynn v. Grundy Mining Co.*, 21 BLR 1-40 (1997). In considering all the evidence of record on the merits, however, the administrative law judge found that it failed to establish that claimant was totally disabled due to pneumoconiosis. Accordingly, benefits were denied.²

On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, (the Director) has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *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'Keefe 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 establish that he suffers from pneumoconiosis, that the

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² Claimant filed his first claim for benefits on December 18, 1985. Administrative Law Judge John C. Holmes denied benefits on this claim on June 12, 1991. Claimant did not appeal the denial. Claimant filed the instant duplicate claim on August 28, 1996.

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 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 administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. The administrative law judge, citing the regulation at Section 718.204(c) which requires that pneumoconiosis must be a substantially contributing cause of pneumoconiosis, found that the evidence of record failed to establish that claimant's total disability was even in part due to pneumoconiosis. Specifically, the administrative law judge stated that every physician of record, *i.e.*, Drs. Broudy, Anderson, Wright, and Dahhan, with the exception of Dr. Vaezy, found that claimant's disability was due solely to claimant's lengthy smoking habit, Employer's Exhibits 1-4; Director's Exhibits 12, 44-48, 51-55, and that Dr. Vaezy's opinion that disability was partly due to coal mine employment was insufficient to establish disability causation. 20 C.F.R. §718.204(c). The administrative law judge, therefore, properly found that claimant failed to establish that he was totally disabled due to pneumoconiosis, an essential element of entitlement. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge