

BRB No. 06-0195 BLA

ROGER DALE COLLINS)
)
 Claimant-Petitioner)
)
 v.)
)
 VICTORY COAL COMPANY,)
 INCORPORATED)
)
 Employer-Respondent)
)
 and) DATE ISSUED: 07/27/2006
)
 KENTUCKY EMPLOYERS MUTUAL)
 INSURANCE)
)
 Carrier)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR) DECISION and ORDER
)
 Party-in-Interest)
 Appeal of the Decision and Order of Janice K. Bullard, Administrative Law
 Judge, United States Department of Labor.

Roger Dale Collins, Shelbiana, Kentucky, *pro se*.

Paul E. Jones (Jones, Walters, Turner & Shelton, PLLC), Pikeville,
Kentucky, for employer.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals
Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (04-
BLA-05654) of Administrative Law Judge Janice K. Bullard 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 found, and the parties stipulated to, thirty-three years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 3. After considering all the evidence of record, the administrative law judge concluded that the evidence was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Decision and Order at 4-10. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, 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 will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). If the findings of fact and conclusions of law of the administrative law judge 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 filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). 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

¹ Claimant filed his claim for benefits on October 22, 2002, which was denied by the district director on September 30, 2003. Director's Exhibits 2, 18. Claimant subsequently requested a hearing before the Office of Administrative Law Judges on October 24, 2003. Director's Exhibit 19.

contains no reversible error.² Considering the relevant evidence of record, the administrative law judge acted within her discretion, as fact-finder, in concluding that the evidence was insufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). *See Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

In considering the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b), the administrative law judge properly determined that the presumption at 20 C.F.R. §718.304 is not applicable in this case as the record does not contain any evidence of complicated pneumoconiosis. *See* 20 C.F.R. §718.204(b)(1); Decision and Order at 5. The administrative law judge further correctly found that all of the pulmonary function and blood gas studies of record were non-qualifying.³ *See* 20 C.F.R. §718.204(b)(2)(i), (ii); *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); Director's Exhibit 10; Employer's Exhibit 1; Decision and Order at 9. The administrative law judge further properly found that there is no evidence of cor pulmonale with right-sided congestive heart failure in the record pursuant to Section 718.204(b)(2)(iii). *See* 20 C.F.R. §718.204(b)(2)(iii); *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); Decision and Order at 8.

Moreover, the administrative law judge considered the medical opinion evidence of record and rationally concluded that the opinions were insufficient to establish claimant's burden of proof pursuant to Section 718.204(b)(2)(iv) as no physician opined that claimant was totally disabled.⁴ *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 3, 5.

³ A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2) (i), (ii).

⁴ Dr. Baker opined that claimant had minimal to no respiratory impairment and has the respiratory capacity to perform the work of a coal miner or to perform comparable work in a dust-free environment. Director's Exhibits 10, 14. Dr. Broudy opined that claimant has no respiratory impairment and retains the respiratory capacity to perform the work of an underground coal miner or to do similarly arduous manual labor. Director's Exhibit 12. Dr. Fino opined that there is no respiratory impairment present and that from a respiratory standpoint, claimant is neither partially nor totally disabled from returning to his last mining job or to a job requiring similar effort. Employer's Exhibit 1.

(1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) (*en banc*), *aff'd on recon. en banc*, 9 BLR 1-104 (1986); *Gee*, 9 BLR 1-4; *Perry*, 9 BLR 1-1; Director's Exhibits 10, 12; Employer's Exhibit 1; Decision and Order at 10.

The administrative law judge is empowered to weigh the medical evidence and to draw her own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2) as it is supported by substantial evidence and is in accordance with law. *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

Because claimant has failed to establish the existence of a totally disabling respiratory or pulmonary impairment, a requisite element of entitlement in a miner's claim pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded and we need not address the administrative law judge's additional findings pursuant to 20 C.F.R. §718.202(a). *See Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge