

BRB Nos. 98-1374 BLA and
98-1374 BLA-A

FONSO McINTOSH)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
KENTUCKY CARBON COAL)	DATE ISSUED:
CORPORATION)	
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	
COMPANY)	
)	
Employer/Carrier-Respondent)	
Cross-Petitioner)	
)	
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 Daniel J. Roketenetz,
Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Deron L. Johnson (Boehl, Stopher & Graves), Prestonsburg, Kentucky, for
employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN,
Administrative Appeals Judge, and NELSON, Acting Administrative Appeals
Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denial of Benefits (95-BLA-1974) of

Administrative Law Judge Daniel J. Roketenetz 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). Employer cross-appeals the administrative law judge's Decision and Order. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited claimant with twenty-seven and one-quarter years of qualifying coal mine employment. Next, the administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b), but failed to establish total respiratory disability under 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred by failing to find total disability under Section 718.204(c)(4). In response, employer urges affirmance of the denial of benefits. On cross-appeal, employer contests the administrative law judge's determinations regarding its designation as the responsible operator and that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter urging affirmance of the administrative law judge's responsible operator finding, and expressing no opinion with regard to the merits of the entitlement.²

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 the 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).

Claimant argues that the administrative law judge erroneously failed to accord greater weight to the opinion of Dr. Sundaram, who opined that claimant is totally disabled and unable to indulge in any gainful employment. Claimant contends that because Dr. Sundaram's opinion is the most recent, it is therefore, the most probative opinion of claimant's condition. Claimant's Exhibit 1. Although, the administrative law judge found that Dr. Sundaram's opinion should be the most probative as it was the most recent opinion of record, he rationally determined that the opinion was entitled to less weight inasmuch as Dr. Sundaram failed to explain his finding in light of the non-qualifying pulmonary function study he administered and the fact that the only justification given for his opinion was that claimant became short of breath with limited exertion. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145, 1-147 n.2 (1984); Decision and Order at 8. Inasmuch as the administrative law judge, within a proper exercise of his discretion, determined that Dr. Sundaram's opinion was cursory because it lacked supportive documentation and reasoning, *see Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987),

we affirm his determination that Dr. Sundaram's opinion failed to outweigh the two contrary opinions contained in the record, those of Drs. Dineen and Fritzhand.³ *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 8. We, therefore, affirm the administrative law judge's finding that claimant failed to demonstrate total disability pursuant to Section 718.204(c)(4). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

Inasmuch as claimant has not raised any other allegation of error with respect to the administrative law judge's analysis of the medical evidence under Section 718.204(c), we affirm the administrative law judge's determination that claimant failed to satisfy his burden of establishing total respiratory disability pursuant to Section 718.204(c), a requisite element of entitlement under Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.⁴

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge