

BRB No. 98-1416 BLA

RUSHA MEADE )  
(On Behalf of the Estate of CONLEY )  
MEADE) )

Claimant-Petitioner )

v. )

REEDY COAL COMPANY )

DATE ISSUED:

and )

LIBERTY MUTUAL INSURANCE )  
COMPANY )

Employer/Carrier- )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

Party-in-Interest )

DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of J. Michael O'Neill,  
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/carrier.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order - Denying Benefits (97-BLA-0769) of

Administrative Law Judge J. Michael O'Neill 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 that while the evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), it was sufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). The administrative law judge further found that the evidence was insufficient to establish that the total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Therefore, benefits were denied.

On appeal, claimant challenges the administrative law judge's finding that the evidence fails to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) based upon the medical opinions of record. Claimant asserts that the administrative law judge erred in according greater weight to the opinion of Dr. Broudy and in not crediting the opinions of Drs. Myers, Vuskovich, Fritzhand and Clarke. Employer, in response, asserts that the administrative law judge's findings that the evidence fails to establish the existence of pneumoconiosis and total respiratory disability due to pneumoconiosis are supported by substantial evidence, and accordingly, urges affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs has not participated in the instant appeal.<sup>2</sup>

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 into the Act 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, claimant must establish that the miner has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. Failure to prove any of these requisite elements of entitlement compels a denial of benefits. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

With respect to the administrative law judge's finding that the evidence fails to establish total respiratory disability due to pneumoconiosis at Section 718.204(b), the administrative law judge noted that Drs. Myers, Vuskovich, Fritzhand and Clarke all opined that the miner's total disability was due to pneumoconiosis, but permissibly found these opinions were outweighed by Dr. Broudy's medical opinions, which concluded that the miner's total disability was not due to pneumoconiosis because Dr. Broudy possessed superior expertise. The administrative law judge found that Dr. Broudy was a pulmonary specialist, Decision and Order at 8 and 10, and the record reflects that Dr. Broudy stated that

he specialized in pulmonary medicine with a sub-specialty in internal medicine, Employer's Exhibit 1 at 10. *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); see *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Trent, supra*. Accordingly, we affirm the administrative law judge's finding that the evidence is insufficient to establish total respiratory disability due to pneumoconiosis pursuant to Section 718.204(b). See *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989). As this finding precludes entitlement pursuant to the Part 718 regulations, see *Trent, supra*; *Perry, supra*, we affirm the denial of benefits.<sup>3</sup>

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge