

BRB No. 04-0195 BLA

WILLIAM J. LEE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DALE COAL, INCORPORATED)	
)	
and)	
)	
WEST VIRGINIA COAL-WORKERS’ PNEUMOCONIOSIS FUND)	DATE ISSUED: 06/30/2004
)	
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 Denying Benefits of Richard A. Morgan,
Administrative Law Judge, United States Department of Labor.

William J. Lee, Glen Daniel, West Virginia, *pro se*.

Robert Weinberger (West Virginia Coal-Workers’ Pneumoconiosis Fund,
Employment Programs Litigation Unit), Charleston, West Virginia.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Benefits (2003-BLA-5426) of Administrative Law Judge Richard A. Morgan rendered 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). Claimant

filed his application for benefits on August 21, 2001. Director's Exhibit 2. The administrative law judge credited the parties' stipulation that claimant worked in qualifying coal mine employment for twelve years and found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(b).

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to 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. *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 into the Act 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 under 20 C.F.R. Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that he or she is totally disabled due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove 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 issues on appeal, and the evidence or record, we affirm as supported by substantial evidence the administrative law judge's finding that claimant is not totally disabled. Under 20 C.F.R. §718.204(b)(2)(i), the administrative law judge properly found that the two pulmonary function studies of record are non-qualifying for total disability. Decision and Order Denying Benefits at 14; Director's Exhibit 9; Employer's Exhibit 1. Similarly, claimant is unable to establish total respiratory disability under 20 C.F.R. §718.204(b)(2)(ii) since the two blood gas studies of record also yielded non-qualifying values. *Id*; Director's Exhibit 10. The administrative law judge likewise properly found that the record contains no evidence of cor pulmonale with right-sided congestive heart failure to permit claimant to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii).

In considering the medical opinion evidence, the administrative law judge found that while Dr. Mullins opined that claimant has "ten percent whole body impairment," Dr. Zaldivar found no evidence of pulmonary impairment. Decision and Order Denying

Benefits at 8, 9, 12; Director's Exhibit 9; Employer's Exhibit 1. The administrative law judge further found that Dr. Mullins explained that claimant's "ten percent body impairment could be related" to claimant's effort. Decision and Order Denying Benefits at 12. The administrative law judge reasonably found Dr. Mullin's opinion was unreasoned because "she merely lists her conclusions and diagnosis without providing a reasoned description of how she came to such conclusions." *Id.*; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge, within his discretion as trier-of-fact, accorded more weight to the opinion of Board-certified pulmonologist, Dr. Zaldivar, based on his qualifications, finding his opinion well reasoned and documented.¹ *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34, 2-45 (4th Cir. 1997); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order Denying Benefits at 13. Accordingly, we affirm the administrative law judge's finding that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(b)(2)(i)-(iv).

Inasmuch as the administrative law judge properly found that claimant is not totally disabled pursuant to 20 C.F.R. §718.204(b), an essential element of entitlement, we need not address the administrative law judge's findings relevant to the existence of pneumoconiosis and causation. *Trent*, 11 BLR 1-26; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4, 1-5 (1986)(*en banc*); *Perry*, 9 BLR 1-1. Because claimant failed to establish total respiratory disability under 20 C.F.R. §718.204(b), a requisite element of entitlement, *see Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1; *Gee*, 9 BLR 1-4, claimant is precluded from benefits. *Id.*

¹ The administrative law judge found that Dr. Mullins qualifications were not part of the record. Decision and Order Denying Benefits at 9.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge