

BRB No. 05-0987 BLA

TOMMY LANE ROBERTS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 06/26/2006
LEECO, INCORPORATED	)	
	)	
and	)	
	)	
JAMES RIVER COAL COMPANY	)	
c/o ACORDIA EMPLOYERS SERVICE	)	
	)	
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 Daniel J. Rokotenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer/carrier.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5770) of Administrative Law Judge Daniel J. Rokotenetz 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 April 24, 2002. Director’s Exhibit 2. The administrative law judge credited claimant with twenty-two years of coal mine employment<sup>1</sup> pursuant to the parties’ stipulation. Decision and Order at 4; Hearing Transcript at 8. The administrative law judge found that claimant failed to establish both the existence of pneumoconiosis and that he is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §§718.202(a), 718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the x-ray evidence when he found that claimant did not establish the existence of pneumoconiosis. Claimant also contends that the administrative law judge erred in his consideration of the medical opinion evidence when he found that claimant did not establish that he is totally disabled. Additionally, claimant argues that the Department of Labor failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. Employer responds, urging affirmance of the administrative law judge’s denial of benefits. The Director, Office of Workers’ Compensation Programs (the Director), responds that he met his obligation to provide claimant with a complete and credible pulmonary evaluation.<sup>2</sup>

The Board’s scope of review is defined by statute. The administrative law judge’s Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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).

---

<sup>1</sup> The record indicates that claimant’s coal mine employment occurred in Kentucky. Director’s Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

<sup>2</sup> We affirm as unchallenged on appeal the administrative law judge’s decision to credit claimant with twenty-two years of coal mine employment, and his findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(2)-(a)(4), or a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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 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. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 718.204(b)(2)(iv), the administrative law judge considered Dr. Simpao's opinion that claimant is totally disabled, and the contrary opinions of Drs. Dahhan and Rosenberg that claimant is not totally disabled. Decision and Order at 8-9, 12. The administrative law judge found that Dr. Simpao's opinion was entitled to "less weight" because it was not supported by its underlying documentation and because Dr. Simpao did not adequately explain how his documentation supported his conclusion that claimant is totally disabled. Decision and Order at 12; Director's Exhibit 10. Rather, relying "on the well-reasoned and well-documented medical reports of Drs. Rosenberg and Dahhan along with the non-qualifying pulmonary function study and non-qualifying arterial blood gas study evidence," the administrative law judge determined that total respiratory disability was not established. Decision and Order at 12-13.

Claimant initially asserts that in addressing the issue of total disability, the administrative law judge is required to consider the exertional requirements of claimant's usual coal mine work in conjunction with a physician's findings regarding the extent of any respiratory impairment. Claimant's Brief at 5, citing *Cornett v. Benham Coal*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Hvizdzak v. North Am. Coal Corp.*, 7 BLR 1-469 (1984); *Parsons v. Black Diamond Coal Co.*, 7 BLR 1-236 (1984). The only specific argument claimant sets forth, however, is that:

The claimant's usual coal mine work included being a foreman, cutting machine operator, bolt machine operator, and scoop operator. It can be reasonably concluded that such duties involved the claimant being exposed to heavy concentrations of dust on a daily basis. Taking into consideration the claimant's condition against such duties, it is rational to conclude that the claimant's condition prevents him from engaging in his usual employment in that such employment occurred in a dusty environment and involved exposure to dust on a daily basis.

Claimant's Brief at 5. Claimant's argument is without merit. A statement that a miner should limit further exposure to coal dust is not equivalent to a finding of total disability. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83, 1-88 (1988).

We also reject claimant's argument that pneumoconiosis is a progressive disease that must have worsened, thus affecting his ability to perform his usual coal mine employment, because the Act provides no such presumption, and an administrative law judge's findings must be based solely on the medical evidence of record. *White v. New White Coal Co.*, 23 BLR 1-1, 1-7 n.8 (2004). We therefore affirm the administrative law judge's finding that claimant did not establish that he is totally disabled pursuant to Section 718.204(b)(2)(iv).

Claimant contends that because the administrative law judge did not fully credit Dr. Simpao's October 4, 2002 medical report provided by the Department of Labor, "the Director has failed to provide the claimant with a complete, credible pulmonary evaluation sufficient to substantiate the claim, as required under the Act." Claimant's Brief at 4. The Director responds that he "is only required to provide claimant with a complete and credible examination, not a dispositive one," and states that he met his obligation in this case. Director's Brief at 2.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lacks credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

The record reflects that Dr. Simpao conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. Director's Exhibit 10; 20 C.F.R. §§718.101(a), 718.104, 725.406(a). The administrative law judge did not find nor does claimant allege that Dr. Simpao's report was incomplete. The administrative law judge permissibly found Dr. Simpao's opinion regarding total disability outweighed by better-reasoned and documented opinions from Drs. Dahhan and Rosenberg. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999)(explaining that "ALJ's may evaluate the relative merits of conflicting physicians' opinions and choose to credit one . . . over the other"). Because Dr. Simpao's report was complete and the administrative law judge merely it outweighed by more persuasive evidence, there is no merit to claimant's argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *Cf. Hodges*, 18 BLR at 1-93.

Because claimant failed to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(b)(2), a necessary element of entitlement under

20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits. *Perry*, 9 BLR at 1-2. Thus, we need not address claimant's arguments regarding the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis.

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

---

JUDITH S. BOGGS  
Administrative Appeals Judge