

BRB No. 98-1277 BLA

BOBBY G. KENDRICK)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CHAPPERAL COAL CORPORATION)	DATE ISSUED:
)	
and)	
)	
COSTAIN AMERICAN INSURANCE)	
)	
Employer/Carrier-Respondent)	
)	
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.

Bobby G. Kendrick, Pikeville, Kentucky, *pro se*.

Ronald E. Gilbertson (Kilcullen, Wilson and Kilcullen), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant,¹ without the benefit of counsel, appeals the Decision and Order - Denying Benefits (97-BLA-1412) 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

¹ Claimant is Bobby G. Kendrick, the miner, who filed a living miner's claim with the Department of Labor on February 16, 1994. Director's Exhibit 1.

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer, in response, asserts that the administrative law judge's findings are supported by substantial evidence, and urges affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a response brief.

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 at Section 718.204(c)(1), the administrative law judge correctly found that none of the pulmonary function studies of record produced qualifying values. Director's Exhibits 10, 11, 12, 13, 13A, 13B, 15, 16, 17, 18, 60, 64, Employer's Exhibit 1.² Accordingly, as the administrative law judge properly found that the pulmonary function studies are insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1), we affirm this finding. 20 C.F.R. §718.204(c)(1).

² 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, Appendix B, C respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

The administrative law judge also correctly found that as none of the blood gas studies of record produced qualifying values, Director's Exhibits 10, 12, 13B, 15, 16, 18, 19, 20, 28, 29, 64, Claimant's Exhibit 5, Employer's Exhibit 5, they were insufficient to establish total disability pursuant to Section 718.204(c)(2). Accordingly, we affirm this finding. 20 C.F.R. §718.204(c)(2).

With respect to the administrative law judge's finding at Section 718.204(c)(3), the administrative law judge correctly found that the evidence contains no evidence of cor pulmonale with right-sided congestive heart disease. Accordingly, we affirm the administrative law judge's finding that total disability was not established at Section 718.204(c)(3). *See Newell v. Freeman United Coal Corp.*, 13 BLR 1-37 (1987).

The administrative law judge also found that the medical opinions of record were insufficient to enable claimant to sustain his burden of establishing total disability at Section 718.204(c)(4). The administrative law judge correctly concluded that Drs Sundaram and Guberman, Director's Exhibit 60, Claimant's Exhibit 5, found claimant totally disabled, while Drs. Anderson, Lane, Myers, Mettu, Broudy, Vuskovich, Fritzhand, Fino, and Branscomb found he was not totally disabled, but was able to perform his usual coal mine employment. Decision and Order at 18. The administrative law judge permissibly accorded less weight to the opinions of Drs. Sundaram and Guberman because they were not supported by objective data. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). He permissibly accorded greater weight to the opinions of Drs. Anderson, Lane, Myers, Mettu, Broudy, Vuskovich, Fritzhand, Fino and Branscomb, as they were better supported by objective data and as he correctly found that six of them were Board-certified in internal and pulmonary medicine, and thus possessed superior qualifications. *See Worhach, supra*; *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Clark, supra*; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel, supra*. Decision and Order at 18. We affirm, therefore, the administrative law judge's finding that the evidence is insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1)-(4). As this finding precludes entitlement pursuant to the Part 718 regulations, *see Trent, supra*; *Perry, supra*, we affirm the denial of benefits.³

³ We need not address the administrative law judge's findings with respect to the existence of pneumoconiosis at Section 718.202(a), as they are rendered moot by our disposition of the case. *See Gibas v. Saginaw Mining Co.*, 748 F.2d 1112, 7 BLR 2-53 (6th

Cir. 1984); *Warman v. Pittsburg and Midway Coal Co.*, 8 BLR 1-390 (1985).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge