

BRB No. 99-0644 BLA

GARY LEE SAYLOR)
)
 Claimant-Petitioner))
)
 v.)
)
 McGRAW EDISON COMPANY)
) DATE ISSUED:
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Carl J. Smith (Richman & Smith), Washington, Pennsylvania, for employer.

Rita Roppolo (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-0535) of Administrative Law Judge Joseph E. Kane denying benefits 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 initially found that claimant was not a coal miner and that employer was not an operator as those terms are defined under the Act. The administrative law judge, nevertheless, considered the merits of the claim. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 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 in finding that he was not a miner within the meaning of the Act. Claimant also challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(c)(1) and (c)(4). Claimant also contends that the Department of Labor failed to provide him with a complete pulmonary evaluation. Employer and the Director, Office of Workers' Compensation Programs, respond in support of the administrative law judge's denial of benefits.¹

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

¹Inasmuch as no party challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1), (a)(2) and (a)(3), these findings are affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). We disagree. The administrative law judge acted within his discretion in finding that Dr. Baker's opinion was too equivocal to support a finding of pneumoconiosis.² See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); Decision and Order at 10; Director's Exhibit 13. The administrative law judge also properly noted that Dr. Fino, the only other physician to address the issue, found that claimant did not suffer from pneumoconiosis. Decision and Order at 10; Director's Exhibit 29; Employer's Exhibit A. Inasmuch as it is supported by substantial evidence, the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed.

In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718.³ See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

We finally hold that the Department of Labor provided claimant with a complete, credible pulmonary evaluation, sufficient to constitute an opportunity to substantiate the claim, as required by the Act. 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); see *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990) (*en banc*). The Department of Labor provided claimant with two opportunities to undergo pulmonary function testing. Although claimant provided suboptimal effort during the

²In a report dated April 28, 1997, Dr. Baker diagnosed possible chronic obstructive pulmonary disease and chronic bronchitis. Director's Exhibit 13. Dr. Baker indicated that these conditions were questionably related to claimant's coal dust exposure. *Id.* However, on a questionnaire of the same date (April 28, 1997), Dr. Baker indicated that claimant did not suffer from an occupational lung disease caused by his coal mine employment. *Id.*

³In light of our affirmance of the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1)-(4), we need not address the administrative law judge's findings regarding claimant's status as a miner or his findings that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

administration of these studies, see Director's Exhibits 11, 12, the Department of Labor satisfied its obligation of providing claimant with an opportunity to substantiate his claim.

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

JAMES F. BROWN
Administrative Appeals Judge