

BRB No. 99-0663 BLA

CHARLES R. BENTLEY)		
)		
Claimant-Petitioner)		
)		
v.)		
)		
RAT CONTRACTORS)	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 - Denying Benefits of Lawrence P. Donnelly, Administrative Law Judge, United States Department of Labor.

Charles R. Bentley, Richlands, Virginia, *pro se*.

Michael F. Blair (Penn, Stuart, Eskridge & Jones), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order - Denying Benefits (98-BLA-0085) of Administrative Law Judge Lawrence P. Donnelly on a duplicate 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). Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ The

¹ Claimant filed his initial claim for benefits on May 6, 1991, which was finally denied on September 20, 1991 for failure to establish total disability. Director's Exhibit 33. Claimant filed the instant claim on March 21, 1997. Director's Exhibit 1. The Office of Workers' Compensation Programs denied the claim on June 26, 1997 and February 5, 1998, as claimant failed to establish a material change in conditions pursuant to 20 C.F.R. 725.309.

administrative law judge found that the newly submitted evidence of record failed to establish total disability pursuant to 20 C.F.R. §718.204(c), and thus, was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.²

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. *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 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 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. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Director's Exhibits 13, 30. Claimant requested a hearing and the claim was forwarded to the Office of Administrative Law Judges on May 11, 1998. Director's Exhibit 31, 34.

²The administrative law judge's determination of the number of years of coal mine employment, responsible operator status, and that claimant previously established the existence of pneumoconiosis is unchallenged on appeal, and is therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

After consideration of the administrative law judge's Decision and Order, and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. The administrative law judge, in the instant case, rationally determined that the newly submitted evidence of record was insufficient to establish total disability pursuant to Section 718.204(c). See *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). The administrative law judge permissibly found that total disability was not established pursuant to Section 718.204(c)(1)-(3) as the new pulmonary function studies and blood gas studies of record produced nonqualifying values³ and there was no evidence of cor pulmonale with right sided congestive heart failure in the record. See 20 C.F.R. §718.204(c)(1)-(3); Director's Exhibits 8, 10, 28; Decision and Order at 5-7; *Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). Further, the administrative law judge considered the medical opinion evidence of record and properly found that since neither Dr. Forehand nor Dr. Fino opined that claimant suffered from a respiratory impairment, total disability was not established pursuant to Section 718.204(c)(4). Director's Exhibits 9, 28; Decision and Order at 7; *Wright v. Director, OWCP*, 8 BLR 1-245 (1985); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon. en banc*, 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *Perry, supra*. Consequently, we affirm the administrative law judge's finding that the newly submitted evidence of record is insufficient to establish total disability pursuant to Section 718.204(c) as it is supported by substantial evidence and is in accordance with law. We therefore affirm the administrative law judge's finding that claimant failed to establish a material change in conditions pursuant to Section 725.309. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996) *rev'g en banc Lisa Lee Mines v. Director, OWCP [Rutter]*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1985).

³ 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).

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