

BRB No. 03-0727 BLA

ROBERT J. BELCHER)
)
 Claimant-Petitioner)
)
 v.)
)
 BBC COAL COMPANY, INCORPORATED)
)
 and)
)
 EASTERN ASSOCIATED COAL) DATE ISSUED: 03/31/2004
 CORPORATION)
)
 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 Edward Terhune Miller,
Administrative Law Judge, United States Department of Labor.

Robert J. Belcher, Northfork, West Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP) Washington, D.C., for
employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH,
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (01-
BLA-0514) of Administrative Law Judge Edward Terhune Miller denying benefits on a
claim filed on July 5, 2000 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).¹ The administrative law judge credited claimant with “at least 23 years” of coal mine employment, but found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(b). Decision and Order at 3, 8-10. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in denying his request for modification.² Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers’ Compensation Programs has filed a letter indicating he will not file a response brief in this case.³

In an appeal filed by a claimant without the assistance of counsel, the Board will consider 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). 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 the Act, 30 U.S.C. §932(a); *O’Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After considering the administrative law judge’s Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge’s finding that claimant failed to establish entitlement to benefits under 20 C.F.R. Part 718. The administrative law judge properly found that claimant failed to establish total disability pursuant to Section 718.204(b)(2)(i), (iii) and (iv)

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The Board granted the motion of the Director, Office of Workers’ Compensation Programs to withdraw his appeal. *Belcher v. BBC Coal Co.*, BRB Nos. 03-0727 BLA and 03-0727 BLA-A (Nov. 14, 2003) (unpublished Order).

³ We affirm the administrative law judge’s finding of at least twenty-three years of coal mine employment inasmuch as this finding is not adverse to claimant and is unchallenged on appeal. *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

inasmuch as the pulmonary function studies of record yielded non-qualifying values⁴, the record does not contain any evidence of cor pulmonale with right sided congestive heart failure and both the examining and consulting physicians of record concluded that claimant is not totally disabled. Decision and Order at 9; Director's Exhibits 16, 17, 19, 37; Employer's Exhibits 3, 5-7.

Regarding Section 718.204(b)(2)(ii), the administrative law judge found that the August 2000 qualifying blood gas study of record is contradicted by a October 2000 non-qualifying study and that Dr. Vasudevan, who administered the August 2000 study concluded that claimant was not totally disabled. Decision and Order at 9. The administrative law judge further found that Drs. Zaldivar, Branscomb and Fino determined that the more recent non-qualifying study demonstrated that any pulmonary changes present in the qualifying study were intermittent and not consistent with pneumoconiosis. Decision and Order at 10. We affirm the administrative law judge's finding that claimant has not established total disability pursuant to Section 718.204(2)(b)(ii), based on the opinions of Drs. Zaldivar, Branscomb and Fino, and their analysis of the non-qualifying study.

Based on the foregoing, we affirm the administrative law judge's finding that the medical evidence does not support a finding that claimant is totally disabled pursuant to Section 718.204(b)(2)(i)-(iv). Decision and Order at 10. Because we affirm the administrative law judge's determination that claimant failed to establish total disability pursuant to Section 718.204(b)(2)(i)-(iv), we need not address the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis under Section 718.202(a). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).⁵

⁴A "qualifying" pulmonary function study yields values that are equal or less than the appropriate values set forth in the tables in Appendix B to 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values.

⁵ In his response brief, employer asserts that Eastern Associated Coal Corporation is not the responsible operator and that claimant's daughter does not qualify as a disabled dependent for purposes of augmentation of benefits. Because we affirm the administrative law judge's Decision and Order denying benefits, we decline to address these issues. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1983).

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

REGINA C. McGRANERY
Administrative Appeals Judge