

BRB No. 04-0580 BLA

WALTER C. HICKOX)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JIM WALTER RESOURCES, INCORPORATED)	DATE ISSUED: 03/09/2005
)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

William Z. Cullen (Sexton, Cullen & Jones), Birmingham, Alabama, for claimant.

Thomas J. Skinner, IV (Lloyd, Gray & Whitehead, P.C.), Birmingham, Alabama, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-5941) of Administrative Law Judge Daniel L. Leland on a claim¹ 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge initially credited the parties’ stipulation that claimant worked in qualifying coal mine employment for sixteen years. Next, the administrative law judge

¹ Claimant, Walter C. Hickox, filed his application for benefits on June 3, 2002. Director’s Exhibit 2.

found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), but failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in finding that claimant did not establish total disability because his job as a section foreman does not fit the dictionary description of manual labor. Instead, claimant contends that the administrative law judge may draw an inference from the record and the opinions of the physicians to determine whether claimant is totally disabled. Claimant contends that the opinion of Dr. Hawkins is sufficient to establish total respiratory disability. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating his intention not to participate in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In evaluating whether the medical opinion evidence is sufficient to demonstrate total respiratory disability at Section 718.204(b)(2)(iv), the administrative law judge must examine each opinion to determine whether that physician was familiar with the exertional requirements of claimant's usual coal mine job. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577-578, 22 BLR 2-107, 2-123-124 (6th Cir. 2000); *Eagle v. Armco, Inc.*, 943 F.2d 509, 15 BLR 2-201 (4th Cir. 1991); *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *see also Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27, 1-29 (1991) (*en banc*); *Onderko v. Director, OWCP*, 14 BLR 1-2, 1-4 (1989); Decision and Order at 7. Furthermore, it is well established that when assessing total disability in terms of the miner's "usual coal mine work," the relevant inquiry "does not relate to coal mine activities in the generic sense but to the coal mine work that the involved black lung claimant was performing at the time of his disability." *Eagle*, 943 F.2d at 512, 15 BLR at 2-205, *citing Walker*, 927 F.2d at 183, 15 BLR at 2-205.

In this case, contrary to claimant's contention, the administrative law judge reasonably concluded that Dr. Hawkins's opinion did not establish a totally disabling respiratory impairment. The administrative law judge found, based on claimant's hearing testimony, that his usual duties as a section foreman "required a lot of walking and checking returns." Decision and Order at 7; *see* Hearing Transcript at 12-13, 14. Specifically, claimant testified that he was required to "walk the returns, and just check

everything in general.” Claimant further stated that he checked the returns for gas and methane, the quantity of air, the conditions of the roadways, and the ventilation. Hearing Transcript at 12-13. Under cross-examination, claimant testified that his last job as section foreman was “a supervisory job” and that most of his duties involved “overseeing” the people working underneath him and that their duties involved walking the returns, checking for methane, etc. Hearing Transcript at 14. Claimant also testified that his other responsibilities included ensuring that employees were properly trained and performed safety precautions. Hearing Transcript at 15-16.

The administrative law judge concluded that Dr. Hawkins’s opinion was insufficient to establish total respiratory disability because while Dr. Hawkins found that claimant had a “moderate respiratory impairment,” he did not address whether claimant could perform the duties of a section foreman and, Dr. Hawkins’s statement that claimant should avoid any further exposure to chemicals, fumes, and dust was insufficient to establish total respiratory disability. This was reasonable. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-356 (7th Cir. 1990); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Hvizdzak v. North American Coal Corp.*, 7 BLR 1-469, 1-471 (1984) (ultimate finding of disability is legal determination to be made by administrative law judge through consideration of exertional requirements of miner’s usual coal mine work in conjunction with physician’s assessment regarding miner’s physical abilities); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988); *Bentley v. Director, OWCP*, 7 BLR 1-612, 614 (1984); *New v. Director, OWCP*, 6 BLR 1-597 (1983); Decision and Order at 7. In addition, the administrative law judge found that the preponderance of the pulmonary function studies were non-qualifying, that all of the blood gas studies were non-qualifying, that Dr. Goldstein did not quantify the level of claimant’s respiratory impairment, and that Drs. Hasson and Goldstein did not address whether claimant’s respiratory impairment would prevent him from performing his usual coal mine employment as a section foreman. Decision and Order at 7. Accordingly, the administrative law judge found, after weighing all the evidence, that it did not establish total respiratory disability. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff’d on recon.*, 9 BLR 1-236 (1987) (*en banc*). Because claimant has not otherwise challenged the administrative law judge’s credibility determinations, we affirm the administrative law judge’s determination that claimant failed to satisfy his burden of demonstrating total respiratory disability pursuant to Section 718.204(b)(2)(iv). *See White v. New White Coal Co., Inc.*, 23 BLR 1-1 (2004); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W. G. Moore & Sons*, 9 BLR 1-4 (1986) (*en banc*).

Consequently, because the administrative law judge’s determination that claimant failed to affirmatively establish total respiratory disability at Section 718.204(b), a requisite element of entitlement under Part 718, is rational, contains no reversible error, and is supported by substantial evidence, we affirm the administrative law judge’s

determination that claimant's entitlement to benefits is precluded. *See Fields*, 10 BLR at 1-19; *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987).

Accordingly, the Decision and Order – Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge