

BRB No. 98-0915 BLA

JESSIE B. JUSTICE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOTIVATION COAL 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 Denying Benefits of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Jessie B. Justice, Richlands, Virginia, *pro se*.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant,<sup>1</sup> without the benefit of counsel,<sup>2</sup> appeals the Decision and Order Denying Benefits (97-BLA-1375) of Administrative Law Judge Fletcher E. Campbell, Jr. on a claim

---

<sup>1</sup> Claimant is Jessie B. Justice, the miner, who filed an application for benefits with the Department of Labor on September 16, 1996. Director's Exhibit 1.

<sup>2</sup> Ron Carson, a benefits counselor with Stone Mountain Health Services in Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

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 administrative law judge found that employer stipulated that claimant suffered from pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203. Decision and Order at 2. The administrative law judge found, however, that the evidence was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). Employer, in response, asserts that the administrative law judge's finding that the evidence fails to establish total respiratory disability is supported by substantial evidence, and accordingly, urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter, indicating that he will not respond to the instant appeal.

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 pursuant to Section 718.204(c)(1), the administrative law judge correctly found that neither of the two pulmonary function studies of record produced qualifying values. Director's Exhibits 11, 28. Further, the administrative law judge also correctly found that both of the blood gas studies of record produced non-qualifying values.<sup>3</sup> Director's Exhibits 13, 28. Accordingly, as these tests are insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1) and (2), we affirm the administrative law judge's finding at Section 718.204(c)(1) and (2). 20 C.F.R. §718.204(c)(1) and (2).

---

<sup>3</sup> 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. §718.204, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

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. Decision and Order at 5, n.4. We therefore affirm the administrative law judge's finding at Section 718.204(c)(3). 20 C.F.R. §718.204(c)(3); *see Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1987); *rev'd on other grounds*, 933 F.2d 510, 15 BLR 2-124 (7th Cir. 1991).

Finally, with respect to the administrative law judge's finding at Section 718.204(c)(4), he correctly found that Dr. Iosif opined that claimant did not show evidence of a respiratory impairment, Director's Exhibit 12; Decision and Order at 4-5, and that Dr. Sargent concluded that claimant had simple coal worker's pneumoconiosis but no respiratory impairment or disability. Director's Exhibit 28; Decision and Order at 4-5. As the administrative law judge's finding that these opinions are legally insufficient to sustain claimant's burden of establishing total respiratory disability at Section 718.204(c)(4) is supported by substantial evidence, it is affirmed. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) *aff'd on recon.*, 9 BLR 1-104 (1986) (*en banc*); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). We affirm, therefore, the administrative law judge's finding that the evidence fails to establish the existence of a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §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.

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