



Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>1</sup> After crediting claimant with sixteen years of coal mine employment, the administrative law judge considered the evidence of record and found it insufficient to establish either the existence of pneumoconiosis or total disability. Benefits were, accordingly, denied. Claimant appeals, generally challenging the administrative law judge's findings. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that she will not respond in this appeal.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on March 9, 2001, to which the Director has responded, asserting that the regulations at issue in the lawsuit do not affect the outcome of this case.<sup>2</sup> Based on the Director's brief and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, we will proceed to adjudicate

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<sup>1</sup> 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). For the convenience of the parties, all citations to the regulations herein refer to the previous regulations, as the disposition of this case is not affected by the amendments.

<sup>2</sup> Pursuant to the Board's instructions, the failure of a party to submit a brief within 20 days following receipt of the Board's Order issued March 9, 2001, would be considered as a position that the challenged regulations will not affect the outcome of this case.

the merits of this appeal.

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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Upon reviewing the evidence, the administrative law judge found the evidence of record insufficient to establish either the existence of pneumoconiosis or total disability. Decision and Order at 7-8. In evaluating the evidence relevant to total disability, the administrative law judge correctly found that as none of the pulmonary function or blood gas studies were qualifying, claimant could not establish total disability at 20 C.F.R. §718.204(c)(1), (2). Director's Exhibits 10-13, 24. Likewise, the administrative law judge correctly found that as there was no evidence of record that claimant suffered from cor pulmonale with right sided congestive heart failure, total disability could not be established at 20 C.F.R. § 718.204(c)(3). Finally, the administrative law judge also correctly found that as none of the physicians who examined claimant opined that he suffered from a totally disabling respiratory impairment, total disability could not be established at 20 C.F.R. §718.204(c)(4). Director's Exhibits 10-13, 24. *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986), *aff'd on recon.*, 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). We, therefore, affirm the finding of the administrative law judge that the evidence of record was insufficient to establish total disability at 20 C.F.R. §718.204(c)(1)-(4) as it is supported by substantial evidence, *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), and we need not address the administrative law judge's finding at 20 C.F.R. §718.202(a)(1)-(4). *Trent, supra*; *Gee, supra*; *Perry, supra*.



Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge