

BRB No. 00-0849 BLA

MATT E. THOMAS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SELECT MINING, INCORPORATED)	DATE ISSUED:
)	
and)	
)	
WEST VIRGINIA COAL WORKERS')	
PNEUMOCONIOSIS FUND)	
)	
Employer/Carrier-)	
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.

Matt E. Thomas, Gilbert, West Virginia, *pro se*.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order - Denying Benefits (99-BLA-0884) of Administrative Law Judge Daniel L. Leland on a 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).¹ After accepting the parties' stipulation

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

to twenty-five years of coal mine employment, the administrative law judge considered the evidence of record and found it sufficient to establish the existence of pneumoconiosis arising out of coal mine employment, but insufficient to establish total disability. Benefits were, accordingly, denied. Claimant appeals, generally challenging the administrative law judge's Decision and Order. Employer/carrier 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 claimant and the Director have responded, asserting that the regulations at issue in the lawsuit do not affect the outcome of this case. The carrier, West Virginia Coal-Workers' Pneumoconiosis Fund, has responded, asserting that the amended regulations at Section 718.104(d) and Section 718.201(a)(2), (c) will affect the outcome of this case. The argument regarding Section 718.104(d) is rejected, however, as that Section, as amended, applies only to evidence developed after January 19, 2001. Regarding carrier's argument concerning the affect of the expanded definition of pneumoconiosis, we note that the administrative law judge's finding of pneumoconiosis in this case is based on both x-ray evidence of pneumoconiosis and physicians' opinions diagnosing the presence of coal workers' pneumoconiosis. Moreover, we note that the outcome of this case would be the same under both the new regulations which have expanded the regulatory definition of pneumoconiosis, by codifying existing law, and existing law which recognizes both the progressive nature of pneumoconiosis and that the definition of pneumoconiosis under the Act encompasses obstructive disorders which arise out of coal mine employment. See *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Richardson v. Director, OWCP*, 94 F.3d 164, 167-68, 21 BLR 2-373, 2-379 (4th Cir. 1996); *Stiltner v.*

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). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Island Creek Coal Co., 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995). Based on the responses from the parties and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, we will proceed to adjudicate 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. *See* 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 raised 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 total disability. Decision and Order at 6. In evaluating the evidence, the administrative law judge correctly found that, as none of the pulmonary function or blood gas study evidence was qualifying, claimant could not establish total disability based on them. 20 C.F.R. §718.204(b)(2)(i), (ii); Director's Exhibits 6, 21. The administrative law judge also correctly found that there was no evidence of record that claimant suffers from cor pulmonale with right-sided congestive heart failure necessary to establish total disability. *See* 20 C.F.R. §718.204(b)(iii). Finally, the administrative law judge also found that only one of the three physicians who examined claimant opined that he suffered from a totally disabling respiratory impairment. The administrative law judge found that both Dr. Ranavaya and Dr. Zaldivar concluded that claimant was able to perform his usual coal mine employment from a pulmonary standpoint. Director's Exhibits 7, 21. Noting that Dr. Bellam stated that claimant was disabled for any gainful employment, the administrative law judge found that his reasons for so finding were unclear. Decision and Order at 6; Claimant's Exhibits 2, 3. The administrative law judge, therefore, permissibly accorded greater weight to the opinions of Drs. Ranavaya and Zaldivar, as they were better reasoned and consistent with the objective test results of record.

20 C.F.R. §718.204(b)(iv); *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). We, therefore, affirm the finding of the administrative law judge that the evidence of record was insufficient to establish total disability as it was supported by substantial evidence. 20 C.F.R. §718.204(b)(i)-(iv). *See Director, OWCP v. Greenwich Collieries*, 114 S.Ct. 2251, 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).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge