

BRB No. 98-1093 BLA

LOUIS F. DINGESS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: <u>5/14/99</u>
)	
DEHUE COAL COMPANY)	
)	
and)	
)	
EXXON COAL COMPANY)	
)	
and)	
)	
EASTERN ASSOCIATED COAL CORPORATION)	
)	
and)	
)	
THOMPSON ELECTRIC SERVICE)	
)	
Employers-Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Louis F. Dingess, Chapmanville, West Virginia, *pro se*.

John O. Scherer (File, Payne, Scherer & File), Beckley, West Virginia, for employer, Dehue Coal Company.

Before: HALL, Chief Administrative Appeal Judge, SMITH and BROWN, Administrative Appeals Judges.
PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (95-BLA-1888) of Administrative Law Judge Paul H. Teitler denying benefits 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). After determining that Dehue Coal Company (employer) is the responsible operator for this claim, the administrative law judge found that claimant failed to establish both the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider whether the Decision and Order below is supported by substantial evidence. *See 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 supported by substantial evidence, are rational, and are consistent with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.* 380 U.S. 359 (1985).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that his pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203 and 718.204. Failure to establish any one of these elements precludes entitlement. See *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

After considering the administrative law judge's Decision and Order and the evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c)(1)-(4). The administrative law judge properly found that none of the pulmonary function studies and arterial blood gas studies of record yielded qualifying values under Section 718.204(c)(1), (c)(2).¹ Decision and Order at 19; Director's Exhibit 17, 19; Exxon's Exhibit 1, 5; Thompson's Exhibit 1. Under Section 718.204(c)(3), the administrative law judge properly found that the record is devoid of any evidence regarding the existence of cor pulmonale with right sided congestive heart failure.

¹A "qualifying" pulmonary function or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those in the tables. 20 C.F.R. §718.204(c)(1), (c)(2).

Under Section 718.204(c)(4), the administrative law judge properly noted that no physician opined that claimant is totally disabled from a pulmonary or respiratory standpoint. Decision and Order at 20. There are four medical opinions of record. Dr. Kayi treated claimant for tuberculosis, but did not diagnose pneumoconiosis and did not make a determination of disability. Dr. Zaldivar, who examined claimant, and Dr. Fino, who reviewed the medical evidence of record, both concluded that claimant had no pulmonary or respiratory impairment and was capable of performing not only his usual coal mining work but also arduous manual labor. Employer's Exhibit 4-6. Dr. Ranayava, the only physician who diagnosed pneumoconiosis, concluded that claimant's impairment was mild. While a medical opinion need not be phrased in terms of "total disability" before total disability can be established, *Black Diamond Coal Mining Co. v. Benefits Review Board*, 758 F.2d 1532, 7 BLR 2-239 (11th Cir. 1985), in the instant case we hold that the administrative law judge did not commit reversible error by not comparing Dr. Ranavaya's diagnosis of claimant's condition with the exertional requirements of claimant's usual coal mine employment. Dr. Ranavaya's conclusory statement *i.e.*, "Mild as reflected by pulmonary function studies", despite the non-qualifying studies, failed to address the severity of claimant's impairment in a way to permit the administrative law judge to infer total disability pursuant to Section 718.204(c)(4). See *Budash v. Bethlehem Mines Corp.* 9 BLR 1-48 and 13 BLR 1-46 (1986) *aff'd on recon.*, 9 BLR 1-104 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *Wright v. Director, OWCP*, 8 BLR 1-245

(1985); Director's Exhibit 18. Therefore, we affirm the administrative law judge's finding that claimant failed to establish total disability under Section 718.204(c)(1)-(4).

Inasmuch as claimant failed to establish total disability under Section 718.204(c), a requisite element of entitlement, an award of benefits under Part 718 is precluded. See *Perry, supra*. In light of the foregoing, we need not review the administrative law judge's findings on the issue of responsible operator or his findings under Section 718.202(a). *Endrizzi v. Bethlehem Mines Corp.*, 8 BLR 1-11 (1985).

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

JAMES F. BROWN
Administrative Appeals Judge