

BRB No. 05-0499 BLA

DALE J. SHANNON )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 ) DATE ISSUED: 11/08/2005  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

Appeal of the Decision on Motion for Reconsideration of Joseph E. Kane,  
Administrative Law Judge, United States Department of Labor.

Dale J. Shannon, London, Kentucky, *pro se*.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision on Motion for Reconsideration (03-BLA-5803) of Administrative Law Judge Joseph E. Kane rendered on a subsequent 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). The administrative law judge accepted the parties' stipulation that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202 and therefore, a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Pursuant to a motion for reconsideration filed by the Director, Office of Workers' Compensation Programs (the Director), the administrative law judge reviewed his prior Decision and Order remanding the case to the district director for the development of evidence regarding claimant's coal mine employment and to provide claimant with a complete

pulmonary evaluation. On reconsideration, the administrative law judge found that although he could not determine the length of claimant's coal mine employment on this record, a remand for further evidentiary development was unnecessary because the medical evidence of record did not establish that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge granted the Director's motion for reconsideration and denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director responds, urging affirmance of the denial of benefits.<sup>1</sup>

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. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 18.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

The administrative law judge concluded that "no evidence exists in the record that [c]laimant is totally disabled," and denied benefits. Decision on Motion for Reconsideration at 11. Substantial evidence supports the administrative law judge's decision, which is in accordance with law. *McFall*, 12 BLR at 1-177.

Pursuant to Section 718.204(b)(2)(i), (ii), the administrative law judge noted accurately that the pulmonary function and blood gas studies conducted by Dr. Baker on

---

<sup>1</sup> We affirm as unchallenged on appeal the administrative law judge's findings that claimant is a miner under the Act and has one dependent, and that claimant established the existence of pneumoconiosis and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §§718.202(a), 725.309(d). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

December 7, 2001 were non-qualifying.<sup>2</sup> Additionally, review of the record discloses no evidence of cor pulmonale with right-sided congestive heart failure, evidence that would be necessary to support a finding of total disability under Section 718.204(b)(2)(iii). Pursuant to Section 718.204(b)(2)(iv), the administrative law judge reviewed Dr. Baker's December 7, 2001 medical report and observed accurately that Dr. Baker found claimant to have no pulmonary impairment. Director's Exhibit 20. As substantial evidence supports the administrative law judge's findings, and the record contains no other evidence that claimant is totally disabled, we affirm the administrative law judge's finding that claimant did not establish that he is totally disabled pursuant to Section 718.204(b)(2).<sup>3</sup> *McFall*, 12 BLR at 1-177.

Because claimant did not establish that he is totally disabled by a respiratory or pulmonary impairment, a necessary element of entitlement, we affirm the administrative law judge's denial of benefits. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

---

<sup>2</sup> A "qualifying" objective study yields values equal to or less than those listed in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(b)(2)(i),(ii).

<sup>3</sup> The administrative law judge did not specifically discuss Dr. Baker's January 29, 1999 medical report diagnosing claimant with "minimal" or "mild" impairment, and stating that claimant is not totally disabled. Director's Exhibit 2. Any error by the administrative law judge was harmless, as Dr. Baker's 1999 report, and the non-qualifying objective tests accompanying that report, could only support the administrative law judge's finding that the record contains no evidence of a totally disabling respiratory or pulmonary impairment. See *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Accordingly, the administrative law judge's Decision on Motion for Reconsideration is affirmed.

SO ORDERED.

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge

---

JUDITH S. BOGGS  
Administrative Appeals Judge