

BRB No. 02-0368 BLA

JAMES L. ALLISON)

Claimant-Petitioner)

v.)

ELK RUN COAL COMPANY,)
INCORPORATED)

Employer-Respondent)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE
ISSUED: _____

DECISION and ORDER

Appeal of the Decision and Order of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Ray E. Ratliff, Jr., Charleston, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

Before: SMITH, McGRANERY, and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (00-BLA-0529) of Administrative Law Judge Richard A. Morgan denying benefits on a miner's 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).² The administrative law judge credited the miner with twenty-six years of coal mine employment. Decision and Order at 4. Applying the regulations pursuant to 20 C.F.R. Part 718, the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and total respiratory disability pursuant to 20 C.F.R. §718.204(b). Decision and Order at 18-20. The administrative law judge also found, however, that claimant failed to establish total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).³ Decision and Order at 20-21. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in failing to find the opinion of Dr. Walker to be sufficient to establish total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Claimant's Brief at 2-3. Additionally, claimant contends that the administrative law judge erred in relying on the opinions of Drs. Spagnolo, Dahhan, Fino, Castle, and Stewart to find that claimant failed to establish total respiratory disability due to pneumoconiosis. Claimant's Brief at 3-15. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.⁴

¹Claimant is James L. Allison, the miner, who filed his claim for benefits on April 14, 1999. Director's Exhibit 1.

²The 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 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³The administrative law judge also found Elk Run Coal Company to be the responsible coal mine operator in this case. Decision and Order at 3.

⁴We affirm the administrative law judge's findings regarding the length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(1)-(a)(4), 718.203(b), and 718.204(b)(2)(i)-(b)(2)(iv) as they are unchallenged on appeal. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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).

The disability causation standard established by the revised regulation at 20 C.F.R. §718.204(c) is as follows:

A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

- (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
- (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that a claimant must provide affirmative evidence that pneumoconiosis is a contributing cause of claimant's totally disabling respiratory impairment. See *Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990), citing *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

The relevant medical evidence regarding the cause of the miner's impairment is as follows: Drs. Stewart, Castle, Spagnolo, Fino, and Dahhan all found that neither coal workers' pneumoconiosis nor claimant's coal mine employment contributed to his respiratory impairment, Employer's Exhibits 1, 5-7, 9, 13, 14; Dr. Zaldivar found claimant's moderate diffusion abnormality to be in large part due to his smoking, Director's Exhibit 29; Dr. Walker found coal workers' pneumoconiosis, coronary artery disease and bronchitis with bronchospasm due to occupational dust⁵ and smoking and found that claimant could not return to his last coal mine employment, but left blank the question regarding the extent to which each of the diagnoses listed above contributes to claimant's impairment,⁶ Director's Exhibit 14.

⁵The record does not indicate that the miner was exposed to any respirable dust other than coal dust.

⁶The Social Security Administration's disability award dated January 8, 1996 is not supportive of claimant's burden at 20 C.F.R. §718.204(c) inasmuch as it does not indicate from what disease or cause claimant is disabled. Claimant's Exhibit 1.

Regarding the cause of claimant's total respiratory disability, the administrative law judge found that "Dr. Walker failed to provide an opinion on the etiology of [claimant's] impairment." Decision and Order at 21. The administrative law judge further found "highly persuasive" that the other "medical opinion evidence is unanimous that pneumoconiosis has not contributed in any way to [claimant's] impairment." *Id.* Accordingly, the administrative law judge concluded that claimant's claim for benefits must be denied because claimant failed "to demonstrate, by a preponderance of the evidence, that [his] pneumoconiosis is a contributing cause of his total disability." *Id.*

Claimant asserts that the administrative law judge erred in determining that Dr. Walker's opinion did not address the etiology of claimant's total respiratory disability. Claimant's Brief at 3. Specifically, claimant contends that Dr. Walker's opinion establishes total respiratory disability due to pneumoconiosis pursuant to Section 718.204(c). Claimant's Brief at 2-3. Contrary to claimant's contention, Dr. Walker's opinion is insufficient to establish total respiratory disability due to pneumoconiosis. Dr. Walker provided his report on the United States Department of Labor's Medical History and Examination for Coal Mine Workers' Pneumoconiosis form, but left blank the portion of this form that addresses the cause of claimant's impairment. Director's Exhibit 14. Because Dr. Walker's opinion is silent on the cause of claimant's total respiratory disability and does not explicitly link the miner's disability to a coal mine dust induced lung disease, the administrative law judge rationally, see *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985), found this physician's opinion to be insufficient to establish that claimant's total respiratory disability is due to pneumoconiosis pursuant to Section 718.204(c). See 20 C.F.R. §718.204(c); *Hobbs, supra, citing Robinson, supra*. The record contains no other medical opinion that would, if credited, be sufficient to establish that the miner's total respiratory disability was due to pneumoconiosis pursuant to Section 718.204(c). Therefore, we hold that the evidence of record is insufficient to establish total respiratory disability due to pneumoconiosis pursuant to Section 718.204(c) as a matter of law. See generally *Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 18 BLR 2-113 (4th Cir. 1994); *Kowalchick v. Director, OWCP*, 893 F.2d 615, 13 BLR 2-226 (3d Cir. 1990). Since we hold that claimant has failed to establish that the miner's total respiratory disability was due to pneumoconiosis pursuant to Section 718.204(c), a requisite element of entitlement under Part 718, see *Trent, supra; Perry, supra*, we also affirm the administrative law judge's denial of benefits in this miner's claim.⁷

⁷Given our disposition of this case, see discussion, *supra*, we need not reach claimant's contention, that the administrative law judge erred in relying on the opinions of Drs. Spagnolo, Dahhan, Fino, Castle, and Stewart to find that claimant failed to establish total respiratory disability due to pneumoconiosis, as it is moot. See *Bibb v. Clinchfield Coal Co.*, 7 BLR 1-134 (1984); see generally

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, JR.
Administrative Appeals Judge

