

BRB No. 08-0200 BLA

W.L. )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 DIRECTOR, OFFICE OF WORKERS' ) DATE ISSUED: 10/02/2008  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Joseph E. Kane,  
Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Jeffrey S. Goldberg (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank  
James, Acting 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: DOLDER, Chief Administrative Appeals Judge, SMITH and  
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (06-BLA-5964) of  
Administrative Law Judge Joseph E. Kane on a claim<sup>1</sup> 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 initially credited the parties'  
stipulation that claimant worked in qualifying coal mine employment for nineteen years.  
Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge  
found that the Director, Office of Workers' Compensation Programs (the Director),  
conceded the existence of pneumoconiosis, but determined that claimant failed to

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<sup>1</sup> Claimant filed an application for benefits on September 15, 2003. Director's  
Exhibit 2.

establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in failing to find total respiratory disability established by medical opinion evidence under Section 718.204(b)(2)(iv). Claimant additionally contends that because the administrative law judge rejected the opinion of Dr. Simpao as unreasoned, the Director failed to provide claimant with a complete, credible pulmonary evaluation sufficient to substantiate his claim, as required by Section 413(b) of the Act, 30 U.S.C. §923(b).<sup>2</sup> The Director responds, urging affirmance of the administrative law judge's denial of benefits.<sup>3</sup>

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed.<sup>4</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish 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, 718.202, 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 (1989).

Claimant first contends that the administrative law judge erred in failing to find total respiratory disability established at Section 718.204(b)(2)(iv) by medical opinion

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<sup>2</sup> The statute requires the Department of Labor to provide the miner with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim. See 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 725.405(b); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990); *Hall v. Director, OWCP*, 14 BLR 1-51 (1990) (*en banc*).

<sup>3</sup> We affirm the administrative law judge's determinations regarding length of coal mine employment, that pneumoconiosis was established pursuant to 20 C.F.R. §718.202(a), and that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), inasmuch as these determinations are unchallenged on appeal. See *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3, 4, 8-9.

<sup>4</sup> The law of the United States Court of Appeals for the Sixth Circuit applies because the miner was employed in coal mine employment in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

evidence. Claimant asserts that total disability is a legal determination to be made by an administrative law judge through comparison of the exertional requirements of claimant's usual coal mine work with a physician's opinion regarding claimant's physical abilities. Claimant also asserts that his usual coal mine work was as a roof bolter and that it reasonably can be concluded that such work involved exposure to heavy concentrations of dust on a daily basis. Thus, taking into consideration that such heavy dust exposure would be inadvisable in light of claimant's respiratory condition, claimant asserts that the administrative law judge should have concluded that claimant's respiratory condition prevented him from engaging in his usual coal mine employment, which involves exposure to coal dust on a daily basis. In addition, claimant argues that since pneumoconiosis is a progressive and irreversible disease and he has been diagnosed as having pneumoconiosis, it can be assumed that he is totally disabled by pneumoconiosis. Claimant fails, however, to delineate how the administrative law judge erred in his analysis of the medical opinion evidence relevant to Section 718.204(b)(2)(iv).

It is well established that a party challenging the administrative law judge's decision must identify specific errors in the administrative law judge's analysis of the evidence and law. 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-49 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983) (a petition for review is insufficient if it merely quotes regulations, rather than alleging specific errors in the administrative law judge's analysis); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

In this case, claimant fails to state with specificity why the administrative law judge's conclusions regarding the medical opinion evidence at Section 718.204(b)(2)(iv) are erroneous. Instead, he merely refers to general propositions of law, without referencing any physicians by name or stating how the administrative law judge erred in rejecting their opinions on the issue of total disability. Claimant has failed, therefore, to provide a basis upon which the Board can review the administrative law judge's findings and we must affirm the administrative law judge's Decision and Order. Further, we reject claimant's general assertion that an opinion as to the inadvisability of being exposed to coal dust establishes total disability at 20 C.F.R. §718.204(b)(2)(iv); *see Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989). We also reject claimant's general allegation that he should be assumed to be totally disabled because he has pneumoconiosis, as a finding of total respiratory disability must be based on medical evidence. *See White v. New White Coal Co., Inc.*, 23 BLR 1-2, 1-7 n.8 (2004); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (*en banc*). Consequently, we affirm the administrative law judge's determination that the medical opinion evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(iv) and the administrative law judge's overall finding that claimant failed to establish total respiratory disability at Section 718.204(b).

Claimant next contends that he was not provided with a complete, credible pulmonary evaluation because the administrative law judge rejected, as unreasoned, the opinion of Dr. Simpao, the physician who conducted claimant's pulmonary evaluation at the behest of the Department of Labor. Consequently, claimant contends that the case must be remanded to provide him with such an evaluation.

The administrative law judge found that Dr. Simpao's opinion was unreasoned because he failed to demonstrate an adequate knowledge of the exertional requirements of claimant's usual coal mine employment. The Director contends, however, that, in addition to the pulmonary evaluation claimant received from Dr. Simpao, the Director also provided claimant with a pulmonary evaluation from Dr. Dahhan. Claimant does not argue that Dr. Dahhan did not provide him with a complete, credible pulmonary evaluation. The Director contends that claimant was therefore provided with a complete, credible pulmonary evaluation, and that claimant's argument regarding Dr. Simpao's opinion is moot. We agree. Because claimant was provided a pulmonary evaluation by Dr. Dahhan and claimant has not challenged the sufficiency of that evaluation or the administrative law judge's treatment of it, he has been provided with a complete pulmonary evaluation, as required by the Act. Consequently, claimant's argument that the case must be remanded is rejected. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1992), *alj decision summarily aff'd*, 972 F.2d 234, 16 BLR 2-137 (8th Cir. 1992) (court retained jurisdiction.); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge