

BRB No. 98-0206 BLA

BILLY RALPH McCLANAHAN )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SHANASH TRUCKING COMPANY )  
 )  
 and )  
 )  
 FIDELITY & CASUALTY INSURANCE )  
 COMPANY/CNA INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 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 - Denial of Benefits of Edith Barnett, Administrative Law Judge, United States Department of Labor.

Billy Ralph McClanahan, Grundy, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order - Denial of Benefits (96-BLA-1092) of Administrative Law Judge Edith Barnett with respect to 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).<sup>1</sup> The

<sup>1</sup>Tim White, a benefits counselor employed by Stone Mountain Health Services of

administrative law judge credited claimant with eighteen and three-quarter years of coal mine employment and considered the claim, filed on September 11, 1995, pursuant to the regulations set forth in 20 C.F.R. Part 718. The administrative law judge determined that the evidence of record was insufficient to establish either the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4) or that claimant is totally disabled pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. Carrier has responded to claimant's appeal and urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.<sup>2</sup>

In an appeal by a claimant filed without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

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Vasant, Virginia, appeared on claimant's behalf at the hearing. Claimant's Notice of Appeal regarding the denial of benefits in the present case was accompanied by a letter written by Mr. White. In an Order issued on November 5, 1997, the Board informed claimant that his appeal would be considered under the standard applicable to claimants who file appeals without the assistance of counsel. *McClanahan v. Shanash Trucking Co.*, BRB No. 98-0206 BLA (Nov. 5, 1997)(unpublished Order); see *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

<sup>2</sup>We affirm the administrative law judge's finding of eighteen and three-quarter years of coal mine employment and her dismissal of Wellmore Coal Corporation from this claim, as these findings are not adverse to claimant and have not been challenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In order to establish entitlement to benefits under 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. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Upon review of the administrative law judge's findings and the evidence of record, we affirm the administrative law judge's determination that claimant did not establish that he is totally disabled pursuant to Section 718.204(c)(1)-(4), as it is rational and supported by substantial evidence. With respect to Section 718.204(c)(1), the administrative law judge noted correctly that the single pulmonary function study of record produced nonqualifying values.<sup>3</sup> Decision and Order at 8; Director's Exhibit 13. Under Section 718.204(c)(2), the administrative law judge found properly that the single blood gas study of record, which included both resting and exercise values, did not produce qualifying results.<sup>4</sup> Decision and Order at 8; Director's Exhibit 15. Concerning Section 718.204(c)(3), the administrative law judge determined correctly that the record does not contain any evidence indicating that claimant is suffering from cor pulmonale with right sided congestive heart failure. Decision and Order at 8. Finally, the administrative law judge rationally found that the medical opinions of record are insufficient to support a finding of total disability pursuant to Section 718.204(c)(4), as none of the physicians of record diagnosed a totally disabling respiratory or pulmonary impairment.<sup>5</sup> Decision and Order at 9; Director's Exhibit 14; Employer's Exhibits 4, 9, 12, 14; see *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, *aff'd on recon.*, 9 BLR 1-104 (1986); *Gee, supra*.

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<sup>3</sup>A "qualifying" pulmonary function study under 20 C.F.R. §718.204(c)(1) is one that produces values equal to or less than the values set forth in the tables appearing in Appendix B to 20 C.F.R. Part 718. A "nonqualifying" study is one that produces values in excess of the table values.

<sup>4</sup>A "qualifying" blood gas study under 20 C.F.R. §718.204(c)(2) is one that produces values equal to or less than the values set forth in the tables appearing in Appendix C to 20 C.F.R. Part 718. A "nonqualifying" study is one that produces values in excess of the table values.

<sup>5</sup>Dr. Dahhan found that claimant retains the respiratory capacity to perform his previous coal mine job as a truck driver and that there are no objective findings of a pulmonary impairment. Employer's Exhibit 9. Dr. Fino found that claimant had no respiratory impairment. Employer's Exhibit 4. Dr. Forehand also found that claimant had not respiratory impairment. Director's Exhibit 14. Dr. Dunker noted that claimant described himself as having no pulmonary complaints. Employer's Exhibit 12.

Because we have affirmed the administrative law judge's determination that claimant did not prove that he is totally disabled pursuant to Section 718.204(c)(1)-(4), an essential element of entitlement, we must also affirm the denial of benefits under Part 718. See *Trent, supra*; *Gee, supra*; *Perry, supra*.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge