

BRB No. 01-0151 BLA

DENZIL KRAHENBUHL)
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 Claimant-Petitioner)
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 v.)
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 ARCH of KENTUCKY, INCORPORATED) DATE ISSUED:
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 and)
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 ARCH MINERAL CORPORATION)
)
 Employer/Carrier-)
 Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Robert L. Hillyard,
Administrative Law Judge, United States Department of Labor.

S. Parker Boggs (Buttermore & Boggs), Harlan, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd, PLLC), Washington, D.C., for
employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER,
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (99-BLA-1169) of
Administrative Law Judge Robert L. Hillyard rendered on a duplicate 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).¹ The administrative law judge found thirty-six years and three months of coal mine employment established and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 3. In

¹ The 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 65 Fed. Reg. 80,107 (2000) to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Association v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot any arguments made by the parties regarding the impact of the challenged regulations.

considering this duplicate claim, the administrative law judge concluded that the newly submitted evidence of record was insufficient to establish total disability due to pneumoconiosis, the element previously adjudicated against claimant, and thus, found that a material change in conditions was not established citing *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in not finding the evidence sufficient to establish total disability due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Adams v. Director, OWCP*, 886 F.2d 818, 12 BLR 2-52 (6th Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant contends that the administrative law judge erred in not finding that the opinion of Dr. Rodrigues sufficient to establish total disability due to pneumoconiosis.² We disagree. The administrative law judge properly accorded greater weight to the opinions of Drs. Baker and Lockey than to the opinion of Dr. Rodrigues, as he found them "more thoroughly documented, better reasoned, [and] based on more objective medical evidence"[.] Decision and Order at 9; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1019 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).³ In addition,

² The administrative law judge's findings pursuant to Sections 718.204(c)(1)-(3)(2000) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-1276 (1983).

³ Dr. Baker diagnosed pneumoconiosis and a mild impairment and found that claimant had the respiratory capacity to perform coal mine work, Director's Exhibit 25; Dr. Lockey found no pneumoconiosis and a mild airway obstruction as evidenced by the pulmonary

the administrative law judge properly found that the opinion of Dr. Rodrigues, when weighed against the other newly submitted medical opinions, pulmonary function studies and blood gas studies, was not sufficient to establish a totally disabling respiratory impairment. *Fields, supra; Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*). Accordingly, we affirm that administrative law judge's finding that claimant failed to establish total disability, and a material change in conditions. 20 C.F.R. 718.204(b)(2)(i)-(iv); *Ross, supra*.

As the administrative law judge rationally found that the newly submitted evidence failed to establish total disability, we affirm the administrative law judge's finding that claimant has failed to establish a material change in conditions and must affirm the denial of benefits. *Ross, supra*.

function study results which he attributed to cigarette smoking, Director's Exhibit 8; Dr. Rodrigues diagnosed pneumoconiosis and found that claimant's pulmonary impairment would prevent him from engaging in coal mine work, Director's Exhibit 30.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge