BRB No. 12-0040 BLA

EDISON WILLIAMS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WESTERN TRUCKING, INCORPORATED	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	DATE ISSUED: 09/11/2012
	)	
Employer/Carrier-Respondents	)	
	)	
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 Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

John C. Collins (Collins & Allen), Salyersville, Kentucky, for claimant.

James W. Herald, III (Jones, Walters, Turner & Shelton, PLLC), Pikeville, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order-Denial of Benefits (2009-BLA-5202) of Administrative Law Judge Richard T. Stansell-Gamm rendered on a claim filed on April 2, 2008, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944

(2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). The administrative law judge credited claimant with "a little over 7 years" of coal mine employment.[1] Decision and Order at 4. The administrative law judge further found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that he did not establish at least fifteen years of coal mine employment and, therefore, erred in determining that claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] Claimant further asserts that the administrative law judge erred in his analysis of the medical opinion evidence in finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

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 applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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[1] The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibits 3, 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc).

[2] A recent amendment to the Act reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that are pending on or after March 23, 2010. Under Section 411(c)(4), if a miner establishes at least fifteen years of qualifying coal mine employment, and that he or she has a totally disabling respiratory impairment, there will be a rebuttable presumption that he or she is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)). Here, the administrative law judge found that claimant did not invoke the presumption because he failed to establish at least fifteen years of coal mine employment, and failed to establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2). Decision and Order-Denial of Benefits at 13 n.27.

To establish entitlement 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, 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, 1-112 (1989).

On appeal, claimant does not challenge the administrative law judge's finding that he failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2). That finding is therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because claimant failed to establish total disability, an essential element of entitlement in a miner's claim under 20 C.F.R. Part 718, and a necessary fact to establish invocation of the Section 411(c)(4) presumption, we affirm the denial of benefits. *Anderson*, 12 BLR at 1-112. Therefore, we need not consider claimant's challenges to the administrative law judge's length of coal mine employment determination, or to his finding that claimant did not establish the existence of pneumoconiosis, as any error in those findings would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge