

BRB No. 99-0216 BLA

BILLY FISHER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY, INCORPORATED)	DATE ISSUED:
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas F. Phalen, Jr.,
Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Harold Rader (Law Offices of Neville Smith), Manchester, Kentucky, for
employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative
Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-BLA-724) of
Administrative Law Judge Thomas F. Phalen, Jr. on 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). The administrative law judge found sixteen years of coal mine
employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part
718.¹ Decision and Order at 2. The administrative law judge concluded that the evidence of
record was sufficient to establish the existence of pneumoconiosis arising out of coal mine

¹ Claimant filed his claim for benefits on May 5, 1997. Director's Exhibit 1.

employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b), but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the evidence of record is sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he would not participate in this appeal.

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 applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe 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. *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 his weighing of the medical opinion evidence pursuant to Section 718.204(c)(4). We disagree. Dr. Baker, in the only opinion of record, diagnosed mild pulmonary impairment and found that claimant had the respiratory capacity to perform his usual coal mine employment. Director's Exhibit 13. Thus, the administrative law judge rationally found the evidence insufficient to establish total disability pursuant to Section 718.204(c)(4). *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir.1989); *Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'd* 16 BLR 1-11 (1991); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(*en banc*), *aff'd on recon. en banc*, 9 BLR 1-104 (1986). Further, contrary to claimant's contention, Dr. Baker's opinion did not provide a basis upon which the administrative law judge could infer total disability. *Zimmerman, supra*; *Gee, supra*; *Wright, supra*. Nor, contrary to claimant's argument, does a diagnosis of simple pneumoconiosis confer a presumption of total disability. See *Gee, supra*; see also *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'd sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish total disability pursuant to Section 718.204(c) as it is supported by substantial evidence and is in accordance with law. Inasmuch as claimant has failed to establish total disability, a requisite element of entitlement pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded, *Trent, supra*; *Perry, supra*, and we will not address

employer's argument regarding Section 718.202(a)(4).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge