

BRB No. 93-2274 BLA

CECIL R. MURDOCK )  
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 Claimant-Petitioner )  
 )  
 v. )  
 ) DATE ISSUED:  
 EASTERN ASSOCIATED COAL COMPANY )  
 )  
 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 of Glenn R. Lawrence, Administrative Law Judge, United States Department of Labor.

Cecil R. Murdock, White Oak, West Virginia, *pro se*.

Catherine A. Wible (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (92-BLA-1483) of Administrative Law Judge Glenn R. Lawrence denying benefits 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 credited claimant with forty-three years of coal mine employment, and based on the filing date, April 30, 1991, considered the claim pursuant to the provisions of 20 C.F.R. Part 718. The administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203. The administrative law judge, however, further found the evidence of record insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c).

Accordingly, benefits were denied. Claimant now appeals this finding. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), has not responded to this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989). 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. In finding that claimant failed to establish his entitlement to benefits, the administrative law judge concluded that the evidence of record was insufficient to establish that claimant was totally disabled.<sup>1</sup> We agree. The record contains four pulmonary function studies and four blood gas studies, none of which yielded qualifying values.<sup>2</sup> See 20 C.F.R. §718.204(c)(1), (2); Director's Exhibits 8, 9, 10, 12, 13, 14; Employer's Exhibit 1. The record contains no evidence that claimant suffers from cor pulmonale with right sided congestive heart failure. 20 C.F.R. §718.204(c)(3). Thus, the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c)(1)-(3) is affirmed. See *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986).

In considering the medical opinion evidence pursuant to 20 C.F.R. §718.204(c)(4), the administrative law judge evaluated the four medical reports contained in the record, one each from Drs. Daniel and Zaldivar, and two from Dr.

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<sup>1</sup> The administrative law judge's finding of forty-three years of coal mine employment is affirmed as it is unchallenged on appeal and as it is supported by substantial evidence. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>2</sup> A "qualifying" objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(c)(1), (c)(2).

Rasmussen. In his report of May 29, 1991, Dr. Daniel diagnosed pneumoconiosis but found no evidence of significant pulmonary dysfunction. Director's Exhibit 11. In his report of April 15, 1992, Dr. Zaldivar concluded that claimant suffered from a mild degree of pulmonary fibrosis that caused a very mild impairment which would not prevent claimant from performing his usual coal mine job. Employer's Exhibit 1. The administrative law judge permissibly found these two reports insufficient to establish total disability pursuant to Section 718.204(c)(4). See *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Dr. Rasmussen, in two reports dated October 5, 1973, and October 2, 1979, diagnosed a moderate impairment, opining that claimant was capable of performing steady work at light levels, placing the degree of impairment at approximately sixty to sixty-five percent. Director's Exhibits 12, 13. Total disability is defined as the inability of a claimant to perform his or her usual coal mine employment or comparable gainful employment. *Taylor v. Evans and Gambrel Co., Inc.*, 12 BLR 1-83 (1988). At the time of Dr. Rasmussen's two examinations, claimant was working at his regular coal mine job and so continued to work for over ten years after the second examination. Director's Exhibits 1, 12, 13. The administrative law judge permissibly found the reports of Dr. Rasmussen insufficient to establish total disability in light of claimant's employment at the time of the examinations and his continuing employment thereafter. See *Taylor, supra*; see also *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). Thus, we affirm as supported by substantial evidence the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c)(4).

Thus, as the administrative law judge's finding that the evidence of record is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) is supported by substantial evidence, it is therefore affirmed. Further, as claimant has failed to establish total disability under 20 C.F.R. §718.204(c), a necessary element of entitlement under Part 718, the denial of benefits is affirmed. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(en banc).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH

Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

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DOLDER  
Administrative Appeals Judge