

BRB No. 06-0372 BLA

RONALD DALE MEADE)
)
 Claimant-Petitioner)
)
 v.)
)
 BIG K COAL COMPANY,)
 INCORPORATED)
)
 and) DATE ISSUED: 12/28/2006
)
 ASHLAND COAL, INCORPORATED)
)
 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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Ronald Dale Mead, Minnie, Kentucky, *pro se*.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appears without the assistance of counsel and appeals the Decision and Order - Denial of Benefits (2004-BLA-0139) of Administrative Law Judge Daniel J. Roketenetz rendered 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).¹ Based on claimant's June 7, 1999 filing date, the administrative law judge credited claimant with ten years of coal mine employment and considered entitlement pursuant to 20 C.F.R. Part 718. The administrative law judge found that the existence of pneumoconiosis arising out of coal mine employment was established based upon employer's concession, but that the evidence did not establish that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2), (c). Decision and Order at 14-15; Director's Exhibit 65. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. In response, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director Office of Workers' Compensation Programs (the Director), has filed a letter arguing that the administrative law judge erred in rejecting the opinions of Drs. Mettu and Sundaram because they relied on non-qualifying studies and requests that the Board remand the case to the administrative law judge for reconsideration of the medical opinion evidence.

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 Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and 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).

¹ This is the second time this case has been before the Board. The Board previously granted Director's Motion to Remand the case to the district director to provide claimant with a complete, credible pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim as required by the Act. *Meade v. Big Coal Co.*, BRB No. 02-0468 BLA (Feb. 24, 2003) (unpublished). Claimant's subsequent appeal to the United States Court of Appeals for the Sixth Circuit was dismissed because the Board's Decision and Order remanding the case was not a final decision. *Meade v. Big K Coal Co.*, No. 03-3572 (6th Cir. Sep. 19, 2003). On January 28, 2004, the Board remanded the case to the district director for further proceedings. Director's Exhibit 64.

Pursuant to Section 718.204(b)(2)(i), the administrative law judge rationally found that the pulmonary function studies of record do not establish that claimant is totally disabled. The administrative law judge acted properly in basing his finding upon the fact that the September 9, 1997 study was nonconforming, as it did not contain three tracings, and the eight remaining studies did not produce qualifying values.² 20 C.F.R. 718.103(b); *Estes v. Director, OWCP* 7 BLR 1-414 (1984); Decision and Order at 7; Director's Exhibits 10, 12, 28, 29, 64; Employer's Exhibit 1. The administrative law judge also properly found that the record contains no evidence of cor pulmonale with right-sided congestive heart failure to permit claimant to establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

Pursuant to Section 718.204(b)(2)(ii), the administrative law judge found that the record contained twelve blood gas studies and indicated that the tests performed on January 19, 1990, January 24, 1990, January 26, 1990, February 2, 1991, March 5, 1991, November 1, 1994, October 19, 1999, January 19, 2000 and June 29, 2005 produced non-qualifying results. Decision and Order at 7. A review of the record indicates that the administrative law judge did not properly characterize the blood gas study evidence. Three studies were obtained on January 19, 1990, which was the first day of claimant's hospitalization for acute inhalation pneumonia. Director's Exhibit 12. Two of these tests were qualifying under the table values set forth in Appendix C to Part 718.³ *Id.* Dr. Brenner indicated that claimant's blood gas values improved during the course of his hospital stay and were "normal" on the day of his discharge. *Id.* The administrative law judge did not, however, address the qualifying studies or Dr. Brenner's comments. Accordingly, we must vacate the administrative law judge's determination that claimant did not establish total disability at Section 718.204(b)(2)(ii) and remand the case to the administrative law judge for reconsideration of the blood gas study evidence. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). On remand, the administrative law judge must determine the validity of the qualifying blood gas studies and make a finding as to the weight to which they are entitled based upon a consideration of all relevant evidence.

² A "conforming" pulmonary function study complies with the quality standards set forth in 20 C.F.R. §718.103, Part 718, Appendix B. A "non-conforming" study does not comply with these standards. A "qualifying" pulmonary function study yields values that are equal to or less than the values set out in the tables at 20 C.F.F.R. Part 718, Appendix B. Such a study is evidence of a totally disabling respiratory condition. A "non-qualifying" study exceeds those values in the tables and thus is insufficient to establish total disability. *See* 20 C.F.R. §718.204(b)(2)(i).

³ Dr. Brenner reported that the qualifying studies produced pO₂ values of 49 and 58 and pCO₂ values of 33.8 and 38.3 respectively. Director's Exhibit 12. The nonqualifying test produced a pO₂ of 64 and a pCO₂ of 41.3. *Id.*

In addition, because the administrative law judge relied, in part, upon his finding regarding the blood gas studies to assign weight to the medical opinion evidence relevant to Section 718.204(b)(2)(iv), we must also vacate his determination that the medical opinions of record are insufficient to establish total disability. The administrative law judge must reconsider this evidence in light of his findings under Section 718.204(b)(2)(ii) on remand. *Id.*

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed in part and vacated in part and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge