BRB No. 04-0885 BLA

RICKY WHITEHEAD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 05/20/2005
	)	
and	)	
	)	
SUN COAL COMPANY	)	
	)	
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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

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

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, 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, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (2003-BLA-5347) of Administrative Law Judge Daniel J. Roketenetz 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). Claimant filed his application for benefits on February 5, 2001. Director's Exhibit 2. Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited claimant with fourteen years of coal mine employment.[1] Decision and Order at 4; Hearing Transcript at 11. Addressing the merits of entitlement, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order at 6-13. He further found that claimant failed to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Decision and Order at 13-15. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits, arguing that he erred in weighing the x-ray evidence and the medical opinion evidence of record. In addition, claimant contends that employer exceeded the evidentiary limitations set forth at 20 C.F.R. §725.414. Claimant also maintains that remand is required, as the Department of Labor failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. 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 (the Director), also responds and contends that remand for a complete pulmonary evaluation is not warranted in this case.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment took place in the Commonwealth of Kentucky. Director's Exhibit 3; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[2] The parties do not challenge the administrative law judge's decision to credit claimant with fourteen years of coal mine employment, or his findings pursuant to 20 C.F.R. §§718.202(a)(2), (3) and 718.204(b)(2)(i)-(iii). We therefore affirm these findings as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

(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; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In challenging the administrative law judge's finding that total disability was not established pursuant to Section 718.204(b)(iv), claimant argues that Dr. Baker's opinion, that claimant was "100% occupationally disabled," is well reasoned and documented, and is sufficient for "invoking the presumption of total disability." Claimant's Brief at 6-7. Claimant asserts that in addition to claimant's work history, Dr. Baker based his opinion on claimant's medical history, x-rays, physical examination and blood gas studies. *Id.* Claimant also contends that the administrative law judge made no mention of claimant's usual coal mine work in conjunction with Dr. Baker's opinion of total disability. Claimant's Brief at 8. Citing *Bentley v. Director, OWCP*, 7 BLR 1-612 (1984), claimant notes that the administrative law judge did not mention claimant's age or work experience in conjunction with his assessment that claimant was not totally disabled. Claimant also suggests that the administrative law judge erred in according less weight to the opinion of Dr. Baker because he relied upon nonconforming and/or non-qualifying objective studies. These contentions lack merit.

In considering the medical opinion evidence, the administrative law judge found that Dr. Baker's opinion recorded claimant's occupational and smoking histories and the results of claimant's physical examination, x-ray, pulmonary function and blood gas studies. Decision and Order at 9; Director's Exhibit 12. The administrative law judge reasonably exercised his discretion as trier-of-fact in finding that Dr. Baker did not identify a totally disabling respiratory or pulmonary impairment, however, as Dr. Baker's diagnosis of a "Class I impairment" does not provide an opinion regarding the extent, if any, of a respiratory or pulmonary disability. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Furthermore, the administrative law judge rationally found Dr. Baker's statement that claimant "should limit further exposure" to coal dust and that "such a limitation would 'imply'" total disability, is not equivalent to a finding of total disability.[3] Decision and Order at 15; Director's Exhibit 12; *Zimmerman v. Director,*

[3] Dr. Baker opined:

> Patient has a second impairment based on Section 5.8, Page 106, Chapter Five, Guides to the Evaluation of Permanent Impairment, Fifth Edition,

OWCP, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988).

In addition, we reject claimant's contention that the administrative law judge erred by not comparing the exertional requirements of claimant's coal mine employment with Dr. Baker's assessment of claimant's physical limitations. The administrative law judge is not required to engage in this analysis where a physician details a claimant's physical limitations, but does not provide an opinion regarding the extent of any disability from which the claimant suffers. *See Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc); see also Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). Herein, the administrative law judge rationally found that Dr. Baker's medical opinion does not contain a reasoned and documented diagnosis of total respiratory disability, as Dr. Baker merely provided a finding of a "Class I impairment" without elaborating on the physical limitations, if any, such an impairment may cause. Decision and Order at 15; Director's Exhibit 12; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-16 (1994); *Gee*, 9 BLR 1-4.

Additionally, claimant's assertion of vocational disability based on his age and limited education and work experience, does not support a finding of total respiratory or pulmonary disability compensable under the Act.[4] *See* 20 C.F.R. §718.204; *Ramey v. Kentland Elkhorn Coal Corp.*, 755 F.2d 485, 7 BLR 2-124 (6th Cir. 1985)(holding that the test for total disability is solely a medical test, not a vocational test); *White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-6-7 (2004); *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988). Since claimant has not raised any meritorious allegations of error with respect to the administrative law judge's finding that the evidence of record is insufficient

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> which states that persons who develop pneumoconiosis should limit further exposure to the offending agent. This would imply the patient is 100% occupationally disabled for work in the coal mining industry or similar dusty occupations.

Director's Exhibit 12.

[4] Claimant's reliance on *Bentley v. Director, OWCP*, 7 BLR 1-612 (1982), is misplaced. In *Bentley*, the Board held that age, work experience and education are relevant only to claimant's ability to perform comparable and gainful work, an issue which we did not reach in that case in light of the administrative law judge's finding, at 20 C.F.R. §410.426(a), that claimant did not establish that he had any impairment which disabled him from his usual coal mine employment. *See also* 20 C.F.R. §718.204(b)(1)(i), (ii).

to establish total disability pursuant to Section 718.204(b)(2)(iv), we affirm this finding.[5]

In light of this determination, we also reject claimant's assertion that this case must be remanded to the district director because Dr. Hussain's opinion was discredited by the administrative law judge pursuant to Section 718.202(a)(4). With respect to the issue of total disability, the administrative law judge did not find that Dr. Hussain's opinion was incomplete or lacking credibility. Rather, he rationally determined that because Dr. Hussain explicitly indicated that claimant is able to perform his coal mine work, Dr. Hussain's opinion did not support a finding of total respiratory disability under Section 718.204(b)(2)(iv). Decision and Order at 9-10, 15; Director's Exhibit 10. Thus, Dr. Hussain's opinion on the element of entitlement upon which the administrative law judge based the denial of benefits was complete and credible and remand to the district director is not required. 20 C.F.R. §725.406(a); *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Hill*, 123 F.3d 412, 21 BLR 2-192; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (a)(4). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[5] We reject claimant's argument that "because pneumoconiosis is proven to be a progressive and irreversible disease" it can be concluded that his condition has worsened and, therefore, that his ability to perform his usual coal mine work or comparable and gainful work is adversely affected, as an administrative law judge's findings must be based solely on the medical evidence contained in the record. *See* 20 C.F.R. §725.477(b).

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge