BRB No. 05-0121 BLA

CARLOS BRUMLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SIMPSON MINING COMPANY, INCORPORATED	)	DATE ISSUED: 05/20/2005
	)	
and	)	
	)	
KENTUCKY COAL PRODUCTS SELF-INSURANCE FUND	)	
	)	
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 – Denying Benefits of Rudolph L. Jansen, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, PSC), Hyden, Kentucky, for claimant.

Rodney E. Buttermore, Jr. (Buttermore & Boggs), Harlan, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (03-BLA-6100) of Administrative Law Judge Rudolph L. Jansen 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). In a Decision and Order dated September 9, 2004, the

administrative law judge credited the miner with twelve years of coal mine employment,[1] and found that the evidence established the existence of pneumoconiosis arising out of coal mine employment, pursuant to 20 C. F.R. §§718.202(a)(1), (4), 718.203(b), but failed to establish the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in his evaluation of the medical opinion evidence relevant to the issue of total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[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 (1965).

To be entitled 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 a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Specifically, claimant asserts that the administrative law judge erred in finding that Dr. Baker's opinion of a minimal pulmonary impairment was insufficient to establish total disability without considering it in conjunction with the requirements of claimant's usual coal mine employment as a foreman and heavy equipment operator, citing *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Claimant's Brief at

[1] The record indicates that claimant's coal mine employment was in the Commonwealth of Kentucky. Director's Exhibit 2. 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] The administrative law judge's finding of twelve years of coal mine employment and his finding that claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202(a), but failed to establish the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

3. Although Dr. Baker initially stated that arterial blood gas analysis indicated the presence of mild resting arterial hypoxemia and a minimal respiratory impairment, he went on to conclude, based on complete physical examination and review of all the objective test results, that claimant did not have a respiratory impairment. *See Anderson*, 12 BLR at 1-113; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Director's Exhibit 11. Additionally, the administrative law judge concluded that claimant failed to carry his burden of establishing total disability at Section 718.204(b)(2) as the record contained no qualifying pulmonary function or blood gas studies. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon. en banc*, 9 BLR 1-236 (1987).

In addition, contrary to claimant's argument, the administrative law judge was also not required to consider claimant's age, education or work experience in relation to his ability to work outside of the coal mine industry. Such analysis was unnecessary because the administrative law judge found the medical opinions failed to establish that claimant was totally disabled from performing his usual coal mine employment. *See 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). Moreover, contrary to claimant's argument, contraindication against further coal dust exposure does not establish a totally disabling respiratory impairment. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Nor, contrary to claimant's general contention, does a finding of pneumoconiosis mean that claimant must be found totally disabled. Claimant's Brief at 4; *White*, 23 BLR 1-1, 1-7 n.8; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 534, 21 BLR 2-323, 2-337 (4th Cir. 1998).

Therefore, as the administrative law judge properly concluded that all of the physicians of record opined that claimant did not have a respiratory impairment, and as the administrative law judge further properly weighed the medical opinion evidence together with the pulmonary function and blood gas study results of record, all of which were non-qualifying, we affirm the administrative law judge's determination that the evidence fails to establish the existence of a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(iv). *See Shedlock*, 9 BLR at 1-195, *aff'd on recon. en banc*, 9 BLR at 1-236; *see also Anderson*, 12 BLR at 1-113. A finding of entitlement to benefits is therefore precluded in this case. *See Trent*, 11 BLR at 1-27.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge