

BRB No 99-1236 BLA

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_____)	
CURTISS W. MARTIN)	
Claimant-Petitioner)	
v.)	DATE ISSUED:
PATIENCE, INCORPORATED)	
and)	
WEST VIRGINIA COAL WORKERS')	
PNEUMOCONIOSIS FUND)	
Employer/Carrier-)	
Respondents)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	DECISION and ORDER

Party-in-Interest

Appeal of the Decision and Order-Denying Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

K. Keian Weld (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order-Denying Benefits (99-BLA-0065) of Administrative Law Judge Edward Terhune Miller 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). The administrative law judge credited claimant with “at least fifteen years” of coal mine employment, Decision and Order at 4, found that the medical evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), and found that claimant suffers from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). The administrative law judge concluded, however, that claimant did not establish that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical evidence pursuant to Section 718.204(b). Employer responds, urging affirmance, and the Director, Office of Workers’ Compensation Programs (the Director), has declined to participate in this appeal.

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 into the Act 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 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).

The administrative law judge found that claimant did not establish that his total disability is due to pneumoconiosis pursuant to Section 718.204(b). In making this finding, the administrative law judge correctly inquired whether claimant demonstrated that pneumoconiosis is at least a contributing cause of his total disability. *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 1195-96, 19 BLR 2-304, 2-320 (4th Cir. 1995); *Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 38, 14 BLR 2-68, 2-76 (4th Cir. 1990). The administrative law judge found that claimant’s medical evidence--Dr. Rasmussen’s opinion--was too equivocal to prove this fact. Claimant contends that the administrative law judge erred in finding Dr. Rasmussen’s opinion equivocal as to whether pneumoconiosis is at least a contributing cause of claimant’s total disability. Claimant's Brief at 4.

After examining claimant, Dr. Rasmussen identified three risk factors for claimant’s totally disabling respiratory impairment: “his coal mine dust exposure, cigarette smoking, and his right pneumonectomy.” Director's Exhibit 8 at 4. Dr. Rasmussen identified the pneumonectomy as “a major contributing factor” to claimant’s impairment, but did not specify the extent to which

¹ A pneumonectomy is the excision of lung tissue, especially of an entire lung. *Dorland’s Illustrated Medical Dictionary* 1221 (25th ed. 1974). Review of the record indicates that the right pneumonectomy was done to treat claimant’s lung cancer. The record contains no evidence that the lung cancer was related to coal mine dust.

pneumoconiosis or smoking contributed. *Id.* Later, when Dr. Rasmussen was asked to more fully address the cause of claimant's total disability, Dr. Rasmussen responded that "the bulk" of claimant's impairment was due to the pneumonectomy, while "coal mine dust, and his cigarette smoking combined *may have* produced a minimal degree of his impaired function. . . ." Claimant's Exhibit 4 at 2 (emphasis supplied).

An administrative law judge may accord less weight to a medical opinion that is qualified or equivocal. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-587, 2-606 (4th Cir. 1999)(the weight to give the testimony of an uncertain witness is a question for the trier of fact); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988)(administrative law judge permissibly considered the equivocal nature of a physician's opinion). Here, the administrative law judge was justified in finding Dr. Rasmussen's opinion that pneumoconiosis "may have" contributed to claimant's total disability to be too equivocal to meet claimant's burden of proof at Section 718.204(b). *See Mays, supra; Justice, supra.* Therefore, we reject claimant's contention and affirm the administrative law judge's finding pursuant to Section 718.204(b).

Because claimant has failed to establish that he is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), a necessary element of entitlement under Part 718, we affirm the denial of benefits. *See Trent, supra; Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

² Accordingly, we do not decide whether Dr. Rasmussen's description of a minimal degree of contribution is legally sufficient to constitute evidence of disability causation. Employer's Brief at 1; *see Robinson*, 914 F.2d at 38, 14 BLR at 2-76-77 (pneumoconiosis must be a necessary condition of the disability). Additionally, because we affirm the administrative law judge's finding pursuant to Section 718.204(b), we need not address his analysis of the medical evidence pursuant to Section 718.202(a). *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge