BRB No. 89-0108 BLA

JOHN WOMACK	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ALABAMA BY-PRODUCTS CORPORATION	)	DATE ISSUED:
	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of A.A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

Patricia Guthrie Fraley and William Z. Cullen (Cooper, Mitch, Crawford, Kuykendall & Whatley), Birmingham, Alabama, for claimant.

W. Percy Badham III (Maynard, Cooper, Frierson & Gale, P.C.), Birmingham, Alabama, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and CLARKE, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Decision and Order (88-BLA-1179) of Administrative

Law Judge A.A. Simpson, Jr., awarding 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 *Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

et seq. (the Act). The administrative law judge reviewed this claim pursuant to the provisions of 20 C.F.R. Part 718, and credited claimant with fifteen years of qualifying coal mine employment as stipulated to by the parties and supported by the record. The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, benefits were awarded. Employer appeals, challenging the administrative law judge's findings pursuant to Sections 718.202(a)(1), 718.204(c)(1), and 718.204(b). Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must establish, by a preponderance of the evidence, that he is totally disabled due to pneumoconiosis arising out of coal mine employment. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

Employer maintains that the administrative law judge erred in relying on the opinion of Dr. Risman to support his finding that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Employer further contends that the administrative law judge mischaracterized the opinion of Dr. Russakoff on this issue, and that the evidence of record is insufficient to sustain claimant's burden pursuant to Section 718.204(b) as a matter of law. We agree. This claim lies within the appellate jurisdiction of the United States Court of Appeals for the Eleventh Circuit, which requires a miner to establish that his pneumoconiosis was a substantial contributing factor in the causation of his total pulmonary disability. See Lollar v. Alabama By-Products Corp., 893 F.2d 1258, 13 BLR 2-277 (11th Cir. 1990). A review of the record indicates that Dr. Risman was "not impressed with any degree of ventilatory impairment," and thus he did not render an opinion with respect to the cause of disability. See Director's Exhibit 11. Additionally, although the

administrative law judge acknowledged that Dr. Russakoff opined that claimant's total pulmonary disability was not related to coal mine employment exposure, the administrative law judge equated Dr. Russakoff's diagnosis of contributorily disabling emphysema with a finding of pneumoconiosis. See Decision and Order at 5, 6; Director's Exhibit 33; Claimant's Exhibit 1. The administrative law judge may not substitute his own conclusions for those of a qualified physician. See generally Marcum v. Director, OWCP, 11 BLR 1-23 (1987); Hucker v. Consolidation Coal Co., 9 BLR 1-137 (1986). Inasmuch as the medical opinions of record are either silent on the issue of causation, or affirmatively sever any connection between claimant's disability and his coal mine employment, see Director's Exhibit 33, Claimant's Exhibit 1, Employer's Exhibit 1, they are insufficient to sustain claimant's burden pursuant to Section 718.204(b) as a matter of law. See Lollar, supra. Consequently, we must reverse the administrative law judge's finding that claimant is entitled to benefits, and we need not address the remaining issues of the existence of pneumoconiosis and total disability. See Trent, supra.

Accordingly, the administrative law judge's Decision and Order awarding benefits is reversed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

DAVID A. CLARKE, JR.
Administrative Law Judge