

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

JAMES GRIMMETT,

Petitioner,

v.

ARCH OF WEST VIRGINIA/APOGEE
COAL COMPANY; DIRECTOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF
LABOR,

Respondents.

No. 00-2379

On Petition for Review of an Order
of the Benefits Review Board.
(99-0819-BLA)

Submitted: March 6, 2001

Decided: April 4, 2001

Before WILKINS, LUTTIG, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

S. F. Raymond Smith, RUNDLE & RUNDLE, L.C., Pineville, West Virginia, for Petitioner. William S. Mattingly, JACKSON & KELLY, P.L.L.C., Morgantown, West Virginia, for Respondents.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

James Grimmatt seeks review of the Benefits Review Board's decision and order affirming the administrative law judge's ("ALJ") denial of black lung benefits pursuant to 30 U.S.C.A. §§ 901-945 (West 1986 & Supp. 2000). Grimmatt contends that the ALJ erred by finding that he was not totally disabled due to pneumoconiosis. We affirm.

We must affirm the Board's decision if it correctly found that the ALJ's decision is supported by substantial evidence and is in accordance with law. *Richardson v. Director, Office of Workers' Compensation Programs*, 94 F.3d 164, 167 (4th Cir. 1996). Our review of the record discloses that the Board's decision is based upon substantial evidence and is without reversible error. The ALJ's decision to combine his discussion of whether Grimmatt established total disability with the question of causation was harmless error. *Sahara Coal Co. v. Office of Workers' Compensation Programs*, 946 F.2d 554, 558 (7th Cir. 1991) (holding harmless error doctrine applicable to judicial review of ALJ action in Black Lung cases; "If the outcome of a remand is foreordained, we need not order one."); *Newell v. Director, Office of Workers' Compensation Programs*, 933 F.2d 510, 512 (7th Cir. 1991) ("While the regulations do not specifically provide us with grounds to hold an ALJ's error harmless, we have not been reluctant to rely on harmless error when a remand would be futile (and costly)"). In addition, we find that there was no error in the ALJ's decision to accord greater weight to the opinions of Drs. Zaldivar, Walker and Loudon and lesser weight to Dr. Rasmussen's opinion.

Accordingly, we affirm on the reasoning of the Board. *See Grimmatt v. Arch of West Virginia Apogee*, BRB No. 99-0819-BLA (B.R.B. Sept. 21, 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED