

BRB No. 93-2309 BLA

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| BENJAMIN CRUM |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| WOLF CREEK COLLIERIES |) | |
| |) | |
| Employer-Respondent |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | DATE ISSUED: _____ |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order - Denying Benefits of Martin J. Dolan, Jr.,
Administrative Law Judge, United States Department of Labor.

Jeffery G. Hinkle (Kirk Law Offices), Inez, Kentucky, for claimant.

Peter C. Palumbo, III (Law Offices of Wayne R. Reynolds, P.C.),
Belleville, Illinois, for employer.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and
SHEA, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (91-BLA-2483) of
Administrative Law Judge Martin J. Dolan, Jr. 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 found that
the parties stipulated to twelve years of coal mine employment.¹ Considering the

¹The parties actually stipulated to nineteen years of coal mine employment.
Hearing Transcript at 6.

merits of the claim under 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(4). He further determined that even if claimant could prove the existence of the disease, the evidence fails to establish that claimant is disabled by it. Accordingly, benefits were denied. On appeal, claimant contends that he is entitled to benefits and relies on the quality and duration of his coal mine work with employer, as well as his testimony at the hearing. Employer responds, and seeks affirmance of the decision below. Employer has also filed a Motion for Sanctions against claimant. The Director, Office Of Workers' Compensation Programs, has not filed a brief 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).

Claimant argues that although the record contains evidence that he does not have coal workers' pneumoconiosis and is not disabled by it, the Board must take into consideration his commendable work record and significant dust exposure while working for employer. Claimant also contends that there is no basis upon which to discredit his testimony at the hearing that his symptoms are attributable to pneumoconiosis. Employer contends that claimant fails to identify any error in the administrative law judge's findings which, employer asserts, are supported by substantial evidence.

*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)(1988).

The limited scope of the Board's review of an administrative law judge's Decision and Order necessarily requires a petitioner to identify specific legal or factual errors therein. See *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). We agree with employer's contention that claimant has failed to assign any specific error to the administrative law judge's findings in this case. The failure of claimant to assign specific error precludes the Board's review of those findings and requires that we affirm the decision below. *Id.* We, therefore, affirm the administrative law judge's denial of benefits on the merits of the claim.²

In its response brief, employer further asserts that claimant's appeal is frivolous. Employer has also filed a Motion for Sanctions against claimant, and argues that since claimant continued the claim to the appellate level without reasonable ground, review of the case by the Board along with the effort expended by counsel, is a waste of judicial resources. Specifically, employer requests all relief provided under Section 26 of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. §926.³

Section 422 of the Act, 30 U.S.C. §932(a), incorporates the provisions of the LHWCA except as otherwise provided. The United States Court of Appeals for the Ninth Circuit held in *Metropolitan Stevedore Company v. Brickner*, 11 F.3d 887, BRBS (9th Cir. 1993), that only a federal court can assess a party's costs as sanction against a claimant who institutes or continues, without reasonable ground, workers' compensation proceedings under the LHWCA. Hence the court determined that the district director,⁴ the administrative law judge, and the Board are all without authority to impose Section 926 costs in those claims. The Board has determined

²We note that the administrative law judge's denial of benefits under 20 C.F.R. Part 718 is supported by substantial evidence.

³Section 26 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §926, provides, in pertinent part,

If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings...have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

⁴The district director formerly had the title of deputy commissioner, see 20 C.F.R. §725.101(a)(11); Fed. Reg. 28606 (July 12, 1990).

that it will adopt the holding in *Brickner* and will apply it to cases arising under the Act. Thus, pursuant to *Brickner*, we deny employer's motion for relief under Section 926 of the LHWCA.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed and employer's Motion for Sanctions is denied.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

ROBERT J. SHEA
Administrative Law Judge