

BRB No. 02-0713 BLA

EARNEL P. LUSK)
)
 Claimant-Petitioner)
)
 v.)
)
 STONECOAL BRANCH MINING,)
 INCORPORATED)
)
 and)
)
 WEST VIRGINIA COAL-WORKERS')
 PNEUMOCONIOSIS FUND)
)
 Employer/Carrier-Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

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

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

Robert Weinberger (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer/carrier.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order on Remand -- Denying Benefits (00-BLA-

¹ Claimant, Earnel P. Lusk, is the miner who filed his application for benefits on May

0546) of Administrative Law Judge Edward Terhune Miller 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).² This case is on appeal to the Board for the second time. Pursuant to claimant's previous appeal, the Board affirmed the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a) (2000) and 718.204(c) (2000) as these determinations were unchallenged on appeal. The Board, however, vacated the administrative law judge's determination pursuant to 20 C.F.R. §718.304 because the administrative law judge erroneously stated that the record contained no evidence of the existence of complicated pneumoconiosis. Accordingly, the case was remanded for the administrative law judge to consider all relevant evidence of record under 20 C.F.R. §718.304 and to determine whether claimant was entitled to invocation of the irrebuttable presumption of total disability due to pneumoconiosis set forth at 30 U.S.C. §921(c)(3), as implemented by the regulation at 20 C.F.R. §718.304. *Lusk v. Stonecoal Branch Mining, Inc.*, BRB No. 01-0372 BLA (Dec. 31, 2001) (unpub.).

On remand, the administrative law judge examined all the relevant evidence and determined that claimant failed to establish the existence of complicated pneumoconiosis under Section 718.304(a)-(c), and consequently, claimant is not entitled to invocation of the irrebuttable presumption of totally disabling pneumoconiosis. Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred by failing to find that the evidence was sufficient to establish the presence of complicated pneumoconiosis under Section 718.304. Employer/carrier responds, urging affirmance of the denial of

25, 1999. Director's Exhibit 105.

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

benefits. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating that he is not participating in this appeal.³

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 the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends generally that "[t]he weight of the evidence demonstrates the presence of radiographic findings which meet the regulatory definition set forth in §718.304," and that "it was error for the ALJ to deny benefits in this claim simply because not all the physicians of record made use of the phrase 'complicated pneumoconiosis'." Claimant's Brief in Support of Petition for Review at p. 5 [unpaginated]. However, claimant does not delineate how the administrative law judge erred in his analysis of the evidence relevant to Sections 718.304(a) and (c) and fails to specify any factual or legal error in the administrative law judge's findings or to brief his allegations in terms of relevant law.

It is well established that a party challenging the administrative law judge's decision must demonstrate with some degree of specificity the manner in which substantial evidence precludes the denial of benefits or why the administrative law judge's decision is contrary to law. *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-49 (6th Cir. 1986); *Sarf v. Director, OWCP*; 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Because claimant fails to state with specificity why the administrative law judge's conclusions are contrary to law and has not otherwise raised any allegations of error under Section 718.304, he fails to provide a basis upon which the Board can review the administrative law judge's findings. Inasmuch as claimant offers no specific legal or factual challenge to the administrative law judge's rationale, we affirm the administrative law judge's finding that claimant failed to establish the existence of complicated pneumoconiosis pursuant to Section 718.304.

Accordingly, we affirm the administrative law judge's finding that complicated pneumoconiosis was not established in this case and, therefore, claimant was not entitled to

³ Because the parties do not challenge the administrative law judge's determination pursuant to Section 718.304(b), this finding is affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order on Remand at 7.

the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304. 20 C.F.R. §718.304; 30 U.S.C. §921(c)(3).

Accordingly, the Decision and Order on Remand -- Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge