

BRB No. 97-0846 BLA

GRACIE ESTEP)	
(o/b/o JIM ESTEP, JR.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LEEEO, INCORPORATED)	DATE ISSUED: _____
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Phyllis L. Robinson, London, Kentucky, for claimant.

Timothy J. Walker, P.S.C., London, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-2034) of Administrative Law Judge Richard K. Malamphy denying benefits on a miner’s 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 instant case involves a duplicate claim filed on July 11, 1989.² In a Decision and Order

¹Claimant is the surviving spouse of the deceased miner who died on March 28, 1996. Claimant’s Brief at 1.

²The relevant procedural history of the instant case is as follows: The miner initially filed a claim for benefits with the Social Security Administration (SSA) on July 3, 1972. Director’s Exhibit 56. In a decision dated November 13, 1975, an administrative law judge from the SSA denied benefits. *Id.* The Appeals Council of the SSA affirmed the denial of

dated June 19, 1992, Administrative Law Judge Bernard J. Gilday, Jr. found the evidence insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 and, therefore, denied benefits. The miner subsequently requested modification of his denied claim. On modification, Administrative Law Judge Richard K. Malamphy (the administrative law judge) found the newly submitted x-ray evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge, however, found that claimant failed to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that Dr. James' opinion is sufficient to establish total disability due to pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

benefits on February 20, 1976 and April 12, 1976. *Id.*

The miner filed a second claim with the Department of Labor on July 6, 1976. Director's Exhibit 57. The district director denied the claim on April 14, 1980 and April 23, 1980. Director's Exhibit 58. There is no evidence that the miner took any further action in regard to his 1972 or 1976 claims.

The miner filed a third claim on September 3, 1981. Director's Exhibit 58. The district director denied the claim on November 6, 1981. *Id.* There is no evidence that the miner took any further action in regard to his 1981 claim.

The miner filed a fourth claim on July 11, 1989. Director's Exhibit 1.

Claimant notes that Dr. James' opinion supports a finding of total disability due to pneumoconiosis. Claimant's brief fails to provide an adequate basis for review of the administrative law judge's finding pursuant to 20 C.F.R. §718.204. Claimant's brief neither raises any substantive issues nor identifies any specific error on the part of the administrative law judge in determining that the medical evidence of record was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204.³ Claimant's statements regarding this finding merely point to evidence favorable to his position and amount to no more than a request to reweigh the evidence of record. Such a request is beyond the Board's scope of review. See *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). We, therefore, affirm the administrative law judge's finding that the evidence was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

³Although claimant asserts with respect to the administrative law judge's evaluation of Dr. James' opinion, that a treating physician's report "should be entitled to great weight," Claimant's Brief at 3, the administrative law judge properly stated that there is no indication that Dr. James examined claimant on more than one occasion. Decision and Order at 11; Claimant's Exhibit 1.