BRB No. 06-0296 BLA

ROY M. BENTLEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 08/31/2006
	)	
LANCE COAL CORPORATION	)	
	)	
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 Denying Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Moak & Nunnery, P.S.C.), Prestonburg, Kentucky, for claimant.

Natalie D. Brown (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (05-BLA-5034) of Administrative Law Judge Linda S. Chapman rendered 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). Claimant filed his application for benefits on September 23, 2003. Director's Exhibit 2. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited claimant with seven years of coal mine employment, found that employer is properly named as the responsible operator, that the claim was timely filed, and that claimant failed to establish the existence of pneumoconiosis under 20 C.F.R.

§§718.202(a).[1] Decision and Order at 3, 18. Accordingly, the administrative law judge denied benefits.

On appeal, claimant alleges that the administrative law judge erred in failing to find the existence of pneumoconiosis established pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not file a substantive response to this appeal.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

The Board is not permitted to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of power between the administrative law judge as the trier-of-fact, and the Board as a review tribunal. *See* 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). As we have emphasized previously, the Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. *See* 20 C.F.R. §802.211(b); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Sarf*, 10 BLR 1-119; *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Unless the party identifies errors and briefs its allegations in terms of the relevant law and evidence, the Board has no basis upon which to review the decision. *See Sarf*, 10 BLR 1-119; *Fish*, 6 BLR 1-107.

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant was last employed in the coal mine industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 13.

[2] The administrative law judge's length of coal mine employment determination and her findings pursuant to 20 C.F.R. §§718.202(a)(2),(a)(3), are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, BLR 6 BLR 1-710 (1983).

Pursuant to Section 718.202(a)(1), the administrative law judge considered fifteen interpretations of ten x-rays of record. Weighing all x-ray evidence as well as the credentials of the interpreting physicians, the administrative law judge found that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Other than asserting that the 1/0 readings, by B readers Drs. Baker, Vuskovich, and Forehand, "greatly" outweighed the contrary readings, claimant has not identified an error in the administrative law judge's finding that the x-ray evidence did not establish the existence of pneumoconiosis.[3]

Similarly, under Section 718.202(a)(4), claimant generally asserts that the reports of Drs. Baker, Forehand, and Wright, and the medical hospital records, satisfied his

[3] The administrative law judge found that the negative readings by Dr. Wiot, a dually qualified Board-certified radiologist and B reader, outweighed the positive readings of B readers Baker, Vuskovich, and Forehand. Decision and Order at 14, 15; Claimant's Brief at 3. Because the administrative law judge found these x-rays were negative based on a proper qualitative analysis of the x-ray evidence, we affirm her finding. 20 C.F.R. §718.202(a)(1); s*ee Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004).

burden of proof.[4] Claimant's Brief at 4-7. Claimant essentially asks the Board to reweigh the evidence, which we cannot do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1988). Because claimant, who is represented by counsel, has failed to adequately raise or brief any issue arising from the administrative law judge's weighing of the x-ray and medical opinion evidence under Sections 718.202(a)(1), (4), the Board has no basis upon which to review those findings. Those findings are therefore affirmed. *See* 20 C.F.R. §802.211(b); *Cox*, 791 F.2d 445, 9 BLR 2-46; *Sarf*, 10 BLR 1-119; *Fish*, 6 BLR 1-107.

[4] We reject claimant's suggestion that the administrative law judge is "required" to give additional weight to claimant's treating physician's opinion. The administrative law judge acknowledged Dr. Wright's status as claimant's treating physician but permissibly found his opinion diagnosing pneumoconiosis "entitled to little weight" because his own treatment records over a number of years do not support his diagnosis. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Jericol Mining, Inc., v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 202); Decision and Order at 16.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge