

BRB No. 98-1525 BLA

PAUL J. RHODES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: <u>8/17/99</u>
	)	
BUFFALO MINING COMPANY	)	
	)	
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 Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

J. Robert Weaver, Charleston, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1833) of Administrative Law Judge Clement J. Kennington denying benefits 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 credited claimant with twenty-three years of coal mine employment based on the parties' stipulation. The administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718 as the claim was filed after

March 31, 1980.<sup>1</sup> The administrative law judge found that the weight of the x-ray evidence of record was negative for pneumoconiosis at 20 C.F.R. §718.202(a)(1), that the record contained no evidence at 20 C.F.R. §718.202(a)(2), that claimant was not entitled to the presumptions at 20 C.F.R. §718.202(a)(3), and that since the medical opinion evidence was in equipoise, claimant failed to meet his burden of proof by a preponderance of the evidence under 20 C.F.R. §718.202(a)(4). Accordingly, benefits were denied. On appeal, claimant generally contends that he is entitled to benefits. 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 participate in this appeal.

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.

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<sup>1</sup>Claimant filed his initial claim for benefits on July 5, 1973, which the district director denied on the ground that the evidence was insufficient to establish the existence of pneumoconiosis arising out of coal mine employment and a totally disabling respiratory impairment due to pneumoconiosis on June 12, 1980. Director's Exhibit 36. Claimant filed a second claim for benefits on April 18, 1994, which he withdrew on August 13, 1994. Director's Exhibit 37. The instant claim was filed on January 27, 1997. Director's Exhibit 1. The district director issued a Notice of Initial Finding on March 28, 1997, which employer controverted on April 3, 1997. Director's Exhibits 17, 19. Following the submission of evidence by employer, the district director found claimant entitled to benefits in a letter dated July 16, 1997. Director's Exhibit 32. Employer requested a hearing. Director's Exhibit 33.

§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).

The Board is not required 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 demonstrate why substantial evidence does not support the result reached or why 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); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *Sarf, supra*. 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, supra*; *Fish, supra*.

In the instant case, other than generally asserting that the medical evidence of record was sufficient to establish pneumoconiosis and a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.204(c), see Claimant's Brief at 5-7, claimant has failed to identify specifically any errors made by the administrative law judge in the evaluation of the evidence and applicable law pursuant to Part 718. Thus, as claimant's counsel has failed to adequately raise or brief any issues arising from the administrative law judge's Decision and Order denying benefits, the Board has no basis upon which to review the decision. See *Cox, supra*; *Sarf, supra*.

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

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN

Administrative Appeals Judge

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge