

BRB No. 00-0302 BLA

GERTRUDE COASSOLO)
(Widow of GILDO COASSOLO))
)
Claimant-Petitioner)

v.)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Thomas S. Cometa (Cometa and Cappellini), Kingston, Pennsylvania, for claimant.

Jeffrey S. Goldberg (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, McGRANERY, Administrative Appeals Judge, and NELSON, Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (1999-BLA-00010) of Administrative Law

¹Claimant is Gertrude Coassolo, the miner's widow. The miner, Gildo Coassolo, filed a claim for benefits on November 14, 1984, which was ultimately denied on March 22, 1989. Director's Exhibits 20. The miner filed a second claim for benefits on June 4, 1990 which was denied after reconsideration by the Board on September 28, 1999. The miner died on August 24, 1997 and claimant filed the instant survivor's claim on October 10, 1997. Director's Exhibits 1, 2.

Judge Robert D. Kaplan denying benefits on a survivor'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 administrative law judge found that the parties stipulated that claimant established that the miner had 13.86 years of qualifying coal mine employment, that the miner had a history of smoking cigarettes and that claimant failed to establish that the miner had pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant generally contends that the administrative law judge's Decision and Order is not supported by substantial evidence. Claimant's Brief at 2-4. The Board is not authorized to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of authority between the administrative law judge as the trier-of-fact, and the Board as a reviewing tribunal. *See* 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). The Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order with specificity 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); *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 claim, other than generally asserting that the opinions of Drs. Kuchemba and Greenwald are sufficient to support a finding of the existence of pneumoconiosis, claimant fails to make any allegations of error in the administrative law judge's finding pursuant to Section 718.202(a). As claimant's counsel has failed to adequately raise or brief

²Claimant suggests that physicians' findings of "flattening of hemidiaphragms consistent with chronic obstructive pulmonary disease" on an x-ray dated October 23, 1995, "slight interstitial prominence of both lung bases which can be due to some fibrosis or possible some minimal edema" in an x-ray dated August 19, 1996, and "COPD, fibrosis possible" in an x-ray dated September 3, 1996, could be used by a physician in determining whether or not claimant suffered from pneumoconiosis. Claimant's Brief at 2-3; Director's Exhibit 4. However, these findings in themselves are not sufficient to establish the existence of

any issues arising from the administrative law judge's finding pursuant to Section 718.202(a), the Board has no basis upon which to review the finding. Thus, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) and the denial of benefits as they are supported by substantial evidence and in accordance with law.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) or (a)(4) and thus the administrative law judge did not err in not relying on these reports to find the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

³The administrative law judge rationally concluded that the opinions of Drs. Kuchemba and Greenwald, that claimant has pneumoconiosis, are entitled to no weight because they based their opinions on their belief that the miner had no smoking history when the administrative law judge found that the miner had a significant smoking history. Decision and Order at 10; Director's Exhibit 3; Claimant's Exhibits 1, 2; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Lafferty v. Cannerton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986).