

BRB No. 04-0520 BLA

CHARLES LEON CASTLE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ALMORE MINING COMPANY)	DATE ISSUED: 01/31/2005
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employer/Carrier-Respondents)	
)	
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.

Donald W. McFarland (McFarland & Lovely), Salyersville, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (03-BLA-5794) of Administrative Law Judge Linda S. Chapman on a subsequent claim¹ filed pursuant to

¹ Claimant, Charles Leon Castle, filed his first application for benefits on July 24, 1979, which was finally denied by Administrative Law Judge Frederick Neusner in a Decision and Order dated July 21, 1981. Claimant did not pursue this claim further, but

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 initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for eleven years. Adjudicating this subsequent claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(b). Therefore, the administrative law judge concluded that claimant failed to establish that one of the applicable conditions of entitlement had changed since the date upon which the order denying the prior claim became final under 20 C.F.R. §725.309(d). Accordingly, benefits were denied.

On appeal, claimant generally argues that the administrative law judge erred in failing to credit the medical opinion of Dr. Wicker. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating his intention not to participate in this appeal.²

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 generally challenges the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis. Claimant argues that his formal hearing testimony and the opinion of Dr. Wicker, who diagnosed the existence of pneumoconiosis, constitute competent evidence demonstrating the existence of

instead, filed a second application for benefits on April 3, 1984; this claim was finally denied by Administrative Law Judge Michael O'Neill in a Decision and Order dated May 12, 1993. Subsequently, claimant filed a third application for benefits on July 30, 1998, which Administrative Law Judge Thomas F. Phalen, Jr. denied in a Decision and Order issued on November 10, 1999. Director's Exhibit 1. Claimant filed a fourth application for benefits, which is the subject of the case *sub judice*, on February 21, 2001. Director's Exhibit 3.

² We affirm the administrative law judge's determinations regarding length of coal mine employment and pursuant to 20 C.F.R. §§718.202(a)(1), (a)(2), (a)(4), 718.204(b)(2)(i)-(iv), and 725.309 because these determinations are unchallenged on appeal. See *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 4, 7, 6.

pneumoconiosis. Claimant has failed, however, to provide an argument framed in terms of the administrative law judge's decision below, which is a threshold requirement for the Board's review of the case. 20 C.F.R. §802.211(b). In his Brief supporting his petition for review in this case, claimant fails to delineate how the administrative law judge erred in her analysis of the medical opinion evidence relevant to Section 718.202(a), to specify an allegation of legal or factual error with respect to the administrative law judge's determinations regarding the existence of pneumoconiosis, and to brief his allegations in terms of relevant law on the issue. Brief for Claimant, Charles Leon Castle at pp. 2-3 [unpaginated].

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 either Section 718.202(a) or 718.204(b), 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 pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement under Part 718. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we affirm the administrative law judge's determination that claimant is not entitled to benefits in this case.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge