

BRB No. 06-0578 BLA

PAUL F. HARRIS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 01/30/2007
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Jerry B. Bible (Jerry B. Bible, P.C.), Jasper, Tennessee, for claimant.

Barry H. Joyner (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (03-BLA-5874) of Administrative Law Judge Edward Terhune Miller rendered on a miner's subsequent claim filed on January 10, 2002 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).¹ Director's Exhibit 3. The administrative law judge credited claimant with twenty-six years of coal mine employment and adjudicated

¹ The complete procedural history of this case is set forth in the administrative law judge's Decision and Order dated March 23, 2006. Decision and Order at 2-3.

this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the newly submitted evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(4). Consequently, the administrative law judge found the newly submitted evidence sufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. However, the administrative law judge found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the newly submitted evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) and (a)(4). Further, claimant generally challenges the administrative law judge's denial of benefits, asserting that claimant has shown that he suffers from a total respiratory disability due to pneumoconiosis. The Director, Office of Workers' Compensation Programs, responds, urging affirmance of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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 challenges the administrative law judge's denial of benefits, asserting that he has proven total respiratory disability and that he is entitled to benefits under the Act. Claimant's Brief at 4. The Board, however, 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 trier-of-fact, and the Board as a reviewing tribunal. *See* 20 C.F.R. §802.301(a); *Cox v. Benefits Review Board*, 791 F. 2d 445, 446-47, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). 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*, 791 F.2d at 446, 9 BLR at 2-47; *Sarf*, 10 BLR at 1-120; *Slinker v. Peabody Coal Co.*, 6 BLR 1-465, 1-466 (1983); *Fish*, 6 BLR at 1-109. A petitioner who fails to comply with the requisite regulations provides the Board with no basis to reach the merits of an appeal. *Id.*

Claimant fails to identify any error made by the administrative law judge in his evaluation of the evidence or in his application of the law pursuant to 20 C.F.R. §718.204(b). As claimant's counsel has failed to adequately raise or brief

any issues regarding total disability, the Board has no basis upon which to review that aspect of the administrative law judge's decision. Thus, we affirm the administrative law judge's finding that total disability is not established at 20 C.F.R. §718.204(b). *Sarf*, 10 BLR at 1-121.

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's contentions regarding the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge