

BRB No. 09-0468 BLA

CARL L. KILBY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
LAUREL FORK MINING,)	
INCORPORATED)	
)	
and)	
)	
AMERICAN CASUALTY COMPANY OF)	DATE ISSUED: 01/14/2010
READING, PENNSYLVANIA)	
)	
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 Paul C. Johnson, Jr.,
Administrative Law Judge, United States Department of Labor.

J. Arnold Fitzgerald, Dayton, Tennessee, for claimant.

Philip J. Reverman, Jr. (Boehl, Stopher & Graves, LLP), Louisville,
Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (07-BLA-5236) of
Administrative Law Judge Paul C. Johnson, Jr., 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). The administrative law judge credited

claimant with nine years of coal mine employment.¹ Decision and Order at 5. 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 found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's finding that claimant is not entitled to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a substantive response to claimant's 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. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence 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).

Pursuant to 20 C.F.R. §718.202(a)(1),(3) the administrative law judge considered seven readings of four x-rays, as well as the readers' radiological qualifications, and found that the weight of the x-ray evidence did not establish the existence of pneumoconiosis.² The administrative law judge noted, accurately, that the record

¹ The record indicates that claimant's coal mine employment was in Tennessee. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

² Weighing the x-ray readings, the administrative law judge found that two x-rays were negative for pneumoconiosis, one was in equipoise as to the existence of pneumoconiosis, and that one x-ray received an uncontradicted reading that was positive for both simple pneumoconiosis and complicated pneumoconiosis. The administrative law judge explained that he found the positive x-ray, which was the earliest x-ray of record, to be "suspect" in light of the subsequent x-rays that were either negative, or equivocal, for the existence of pneumoconiosis, and because no other physician identified

contains no biopsy or autopsy evidence for consideration pursuant to 20 C.F.R. §718.202(a)(2). Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Baker and Burton, diagnosing claimant with pneumoconiosis, along with the contrary opinions of Drs. Dahhan and Fino, and found that the weight of the better-reasoned and documented opinions did not establish the existence of pneumoconiosis. Decision and Order at 8-12.

On appeal, claimant, who is represented by counsel, sets forth evidence supportive of his claim, cites cases standing for the proposition that the Act is to be liberally construed, and requests that the “Board . . . grant his claim for Black Lung Benefits. . . .” Claimant’s Brief at 5. Claimant, however, alleges no specific error in regard to the administrative law judge’s consideration of the x-ray or medical opinion evidence. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Because the Board is not empowered to engage in a *de novo* proceeding or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301. Consequently, we affirm the administrative law judge’s finding that the medical evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Because claimant failed to establish the existence of pneumoconiosis, a necessary element of entitlement in a miner’s claim under Part 718, we affirm the denial of benefits. *Anderson*, 12 BLR at 1-112.

a large opacity of complicated pneumoconiosis on any of the other x-rays of record. Decision and Order at 7-8.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge