

BRB No. 97-0594 BLA

JANICE LOWE)	
(Widow of VAUGHN R. LOWE))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BUFFALO COAL COMPANY,)	DATE ISSUED:
INCORPORATED)	
)	
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 on Remand and Decision on Motion for Reconsideration of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Dorothy B. Stulberg (Mostoller & Stulberg), Oak Ridge, Tennessee, for claimant.

John D. Maddox (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order on Remand and Decision on Motion for Reconsideration (92-BLA-585) of Administrative Law Judge Richard K. Malamphy 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). This claim is

¹ Claimant is Janice Lowe, the miner's widow. The miner, Vaughn R. Lowe, filed his first claim for benefits on December 29, 1972. This claim was denied on July 5, 1973. Director's Exhibit 25. The miner filed the instant claim for benefits on April 21, 1988. Director's Exhibit 1.

before the Board for the third time. In its most recent opinion, the Board vacated the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(4) and remanded the claim for the administrative law judge to reconsider the opinions of Drs. Foote, Hudson and Westerfield pursuant to Section 718.202(a)(4) and to render a finding regarding whether claimant established a material change in conditions pursuant to 20 C.F.R. §725.309. *Lowe v. Buffalo Coal Co., Inc.*, BRB No. 95-0925 BLA (Mar. 19, 1996)(unpublished).

On remand, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and a material change in conditions pursuant to Section 725.309. Accordingly, benefits were denied. On reconsideration, the administrative law judge restated his findings and again denied benefits. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance of the Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate.

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

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 record contains x-ray and medical opinion evidence supportive of findings of a material change in conditions, and the existence of pneumoconiosis and total respiratory disability, claimant fails to make any allegations of error in the administrative law judge's finding pursuant to Sections 718.202(a)(4) and 725.309. As claimant's counsel has failed to adequately raise or brief 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 a material change in conditions pursuant to Section 725.309 and the denial of benefits.

Accordingly, the administrative law judge's Decision and Order on Remand and Decision on Motion for Reconsideration denying benefits are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge