

BRB No. 97-0630 BLA

RAYMOND BAILEY)
)
 Claimant-Petitioner)
)
 v.)
)
 P & C MINING COMPANY,)
 INCORPORATED)
)
 Employer-Respondent)
)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED) DATE ISSUED:
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION AND ORDER
 Appeal of the Decision and Order - Denying Benefits of Michael P. Lesniak,
 Administrative Law Judge, United States Department of Labor.

James W. Craft, II, Whitesburg, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (95-BLA-2345) of Administrative Law Judge Michael P. Lesniak 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 determined that this case involves a duplicate claim filed in 1992 and, therefore, considered the claim pursuant to 20 C.F.R. Part 718. After crediting claimant with thirteen years of coal mine employment, the administrative law judge found the newly submitted evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Thus, the administrative law judge concluded that claimant failed to establish a material change in conditions under 20 C.F.R. §725.309. In addition, the administrative law judge considered all of the evidence of record, old and

new, and found it insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (a)(4). Likewise, the administrative law judge found the old and new evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in failing to find the evidence sufficient to establish entitlement to benefits. In response, employer urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.¹

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).

In challenging the administrative law judge's denial of benefits, claimant maintains that the administrative law judge erred by finding that the medical evidence does not establish any of the requisite elements of entitlement. Claimant refers to the medical opinion of Dr. Sundaram, which diagnoses the existence of pneumoconiosis and also states that claimant is totally disabled, and urges that it constitutes a reasoned medical report. In addition, claimant refers to the two positive x-ray readings by Drs. Marshall and Mathur, both of whom are B readers and Board-certified radiologists. Claimant, therefore, contends that he has established entitlement to benefits.

¹ The parties do not challenge the administrative law judge's decision to credit claimant with thirteen years of coal mine employment. This finding is, therefore, affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant, however, fails to brief his allegations in terms of relevant law and fails to allege specific errors on the part of the administrative law judge, but rather, merely recites the medical evidence favorable to his position. See Claimant's Brief at 1-2. The Board will decline to review an administrative law judge's findings where petitioner fails to allege any specific error or to sufficiently brief allegations respecting law and evidence, as required by Section 802.211. 20 C.F.R. §802.211; 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); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Since claimant has not provided the Board with a basis to review the administrative law judge's findings under Sections 718.202(a)(1) and (a)(4) and 718.204(c)(1)-(4), those findings are affirmed.² See *Cox, supra*; *Sarf, supra*; *Fish, supra*. We, therefore, affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. See *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

² Although the administrative law judge did not render findings as to whether the evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), the record does not contain any biopsy or autopsy evidence. Claimant also cannot demonstrate the presence of pneumoconiosis under 20 C.F.R. §718.202(a)(3), as the relevant living miner's claim was filed after January 1, 1982 and there is no evidence suggesting that claimant has complicated pneumoconiosis. See 20 C.F.R. §§718.304, 718.305, 718.306.

