

BRB No. 97-0650 BLA

VINSON G. DINGESS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
WESTMORELAND COAL COMPANY	)	
	)	
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 -- Denying Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

George A. Mills, III, Huntington, West Virginia, for claimant.

Douglas A. Smoot (Jackson & Kelly), Charleston, West Virginia, for the employer.

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

PER CURIAM:

Claimant appeals the Decision and Order -- Denying Benefits (95-BLA-1201) of Administrative Law Judge Edward Terhune Miller rendered on a claim filed pursuant to the provisions of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). A claimant is entitled to benefits under the Act by establishing that he has pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that he is totally disabled by the disease. 30 U.S.C. §901; *Mullins Coal Co., Inc. of Virginia*

*v. Director, OWCP*, 484 U.S. 135, 141, 11 BLR 2-1, 2-5 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Doss v. Director, OWCP*, 53 F.3d 654, 658, 19 BLR 2-181, 2-190 (4th Cir. 1995).

Claimant filed for benefits under the Act on May 9, 1994. Director's Exhibit 1. This claim was administratively approved by the Office of Workers' Compensation Programs, Director's Exhibits 15, 16, 21, and employer both controverted liability for benefits and requested a formal hearing. A hearing was conducted on October 25, 1995 by Administrative Law Judge Edward Terhune Miller. On December 31, 1996 the administrative law judge issued a Decision and Order denying the claim, finding that claimant failed to establish the existence of pneumoconiosis or that his pulmonary disability was due to pneumoconiosis. This appeal followed.

On appeal, claimant contends that the administrative law judge erred by failing to consider his award for occupational pneumoconiosis from the State of West Virginia, and otherwise generally avers that the evidence of record establishes his entitlement to benefits. Employer has filed a response to claimant's appeal, urging that the Board affirm the Decision and Order.<sup>1</sup>

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Upon consideration of the administrative law judge's Decision and Order, the administrative record as a whole, and the pleadings submitted by the parties, we conclude that the Decision and Order is supported by substantial evidence, contains no reversible error, and accords with applicable law. In the alternative, we conclude that, other than raising the administrative law judge's failure to consider his state worker's compensation award for occupational pneumoconiosis, claimant has failed adequately to challenge the administrative law judge's findings of fact and conclusions of law. Accordingly, we affirm the Decision and Order denying benefits.

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<sup>1</sup>We affirm as unchallenged the administrative law judge's findings of 14 years of coal mine employment and the presence of a totally disabling pulmonary or respiratory impairment. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); see *C.G. Willis, Inc. v. Director, OWCP*, 31 F.3d 1112, 1116, 28 BRBS 84, 87 (CRT) (11th Cir. 1994)(assuming as correct findings not contested on appeal).

Claimant argues that the administrative law judge erred in not considering his West Virginia Occupational Pneumoconiosis award, stating that award “meets the requirements of 718.203(b) not considered by the Administrative Law Judge.” Claimant’s Brief at 5 (unpaginated). Under the circumstances of this case, this argument is without merit.

The determinations and findings of a state agency are not binding on the administrative law judge in a federal black lung case, but should be evaluated and weighed like any other evidence. 20 C.F.R. §718.206; *Moseley v. Peabody Coal Co.*, 769 F.2d 357, 361 n. 7, 8 BLR 2-22, 2-26 n. 7 (6th Cir. 1985); accord *Schegan v. Waste Management and Processors, Inc.*, 18 BLR 1-41, 1-46 (1994); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-23 n. 1 (1987); compare *Bath Iron Works Corp. v. Director, OWCP*, 125 F.3d 18, 20-21, \_\_\_ BRBS \_\_\_, \_\_\_ (CRT)(1st Cir. 1997)(state compensation finding given collateral estoppel effect in adjudication under Longshore Act when the litigated issue in both jurisdictions was identical); *Casey v. Georgetown University Medical Center*, \_\_\_ BRBS \_\_\_, \_\_\_, BRB No. 97-975, slip op. 6-7 (Oct. 28, 1997)(same, but no estoppel accorded on facts of case).

The administrative law judge did not err in neglecting to consider the West Virginia award under the circumstances found here, because the record contains no state findings of fact or any medical basis for the occupational pneumoconiosis award. The record contains a photocopy of a computer printout which sets forth “award payment summary information,” as well as award “calculation” data. Director’s Exhibit 6. This printout does not demonstrate how the state award was established or whether claimant’s state entitlement resulted from an adjudication or a settlement. Nor does this document articulate which eligibility criteria were applied. The administrative law judge was therefore not obligated to consider this evidence.

Claimant also fails adequately to brief any remaining issues relating to the administrative law judge’s consideration of the record, findings of fact or conclusions of law, and his broad statements of the law and citations to evidence in support of the claim are insufficient to invoke the Board’s review.<sup>2</sup> Other than to argue that the administrative law judge should have considered his state award, claimant does not adequately challenge the

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<sup>2</sup>For example, claimant points out that the Fourth Circuit has held that chronic obstructive pulmonary disease constitutes pneumoconiosis. It is well established that an obstructive pulmonary or respiratory impairment may constitute statutory pneumoconiosis, *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 175, 19 BLR 2-265, 2-269 (4th Cir. 1995); see also *Mitchell v. OWCP*, 25 F.3d 500, 507 n.12, 18 BLR 2-257, 2-273 n.12 (7th Cir. 1994); *Eagle v. Armco Inc.*, 943 F.2d 509, 511 n.2, 15 BLR 2-201, 2-203-04 n.2 (4th Cir. 1991); *Old Ben Coal Co. v. Prewitt*, 755 F.2d 588, 591 (7th Cir. 1985)(chronic obstructive pulmonary disease meets statutory definition whether or not technical pneumoconiosis), provided the pulmonary or respiratory disease is significantly related to or substantially aggravated by claimant’s coal mine dust exposure. See 20 C.F.R. §718.201; *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 341, 20 BLR 2-246, 2-253 (4th Cir. 1996).

administrative law judge's findings, under Sections 718.202(a), 718.203(b) and 718.204(b), that he failed to establish the existence of pneumoconiosis, disability causation, or that employer's evidence was sufficient to rebut any presumed causal relationship between pneumoconiosis, if found, and claimant's coal mine employment. Because claimant does not allege any other specific error made by the administrative law judge based upon the evidence of record or controlling authority, and does not otherwise "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, 2-47-48 (6th Cir. 1986); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); see 20 C.F.R. §802.211(b), we conclude that claimant has failed adequately to challenge the administrative law judge's findings based on his evaluation of the medical evidence of record.

Accordingly, the Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge