

BRB No. 94-3967 BLA

BERCEL FIELDS)
)
 Claimant-Petitioner)
)
 v.)
)
 SULLIVAN BROTHERS COAL COMPANY)
)
 and)
)
 KENTUCKY COAL PRODUCERS') DATE ISSUED:
 SELF-INSURANCE FUND)
)
 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 on Remand of Lee J. Romero, Jr.,
Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.
John T. Chafin (Francis, Kazee and Francis), Prestonsburg, Kentucky, for
employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order on Remand (91-BLA-0089) of

¹Claimant is Bercel Fields, who initially filed a claim for benefits on April 4, 1980,

Administrative Law Judge Lee J. Romero, Jr. 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

which was finally denied by the Department of Labor on May 5, 1981. Director's Exhibit 67. Claimant filed the instant claim on March 3, 1989. Director's Exhibit 1.

U.S.C. §901 *et seq.* (the Act). This case is before the Board for the second time. In his first Decision and Order, the administrative law judge found that claimant established at least twenty-eight years of qualifying coal mine employment, a material change in conditions pursuant to 20 C.F.R. §725.309(d), and totally respiratory disability due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), 718.204(c)(1), (2), (4). Accordingly, benefits were awarded.

On appeal, the Board affirmed the administrative law judge's findings pursuant to Sections 725.309(d), 718.202(a)(1), and 718.204(c)(1) and (2). The Board vacated the administrative law judge's conclusion that claimant is totally disabled due to pneumoconiosis and remanded the case for specific findings pursuant to 20 C.F.R. §718.204(b). *Fields v. Sullivan Brothers Coal Co.*, BRB No. 92-2400 BLA (Dec. 30, 1993)(unpub.). On remand, the administrative law judge found that the evidence is insufficient to establish that claimant's totally disabling respiratory impairment is related, even in part, to his pneumoconiosis or coal mine employment. Accordingly, benefits were denied.

On appeal, claimant generally contends that he is entitled to benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has chosen not to respond to this appeal.

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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. 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). The Board's scope of review requires that a party challenging the Decision and Order allege specific error and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. 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); *Sarf, supra*; *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). 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 case, other than generally asserting that the medical evidence is sufficient to establish entitlement, Claimant's Brief at 1-4, claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law pursuant to 20 C.F.R. Part 718. As claimant's counsel has failed to raise or brief any issues arising from the administrative law judge's Decision and Order denying benefits, the Board has no basis upon which to review the decision. Thus, we affirm the administrative law judge's finding pursuant to Section 718.204(b) and the denial of benefits.²

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

²The Board previously affirmed the administrative law judge's application of the true-doubt rule to the x-ray evidence in finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). See *Fields, supra*. Subsequent to the issuance of the Board's Decision and Order, the United States Supreme Court, in *Director, OWCP v. Greenwich Collieries [Ondecko]*, U.S. , 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub. nom., Greenwich v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3rd Cir. 1993), held that the true-doubt rule may no longer be applied in the weighing of the evidence to assist a claimant in meeting his burden of proof. Any error is harmless, however, as we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability due to pneumoconiosis pursuant to Section 718.204(b), which is a requisite element of entitlement pursuant to 20 C.F.R. Part 718. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

REGINA C. McGRANERY
Administrative Appeals Judge