

BRB No. 07-0983 BLA

ESTATE OF B.M.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JAMES RIVER COAL SERVICE	)	DATE ISSUED: 07/29/2008
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order – Denying Benefits (2004-BLA-5900) of Administrative Law Judge Joseph E. Kane (the administrative law judge) on a miner’s claim filed, on October 11, 2002, 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). Director’s Exhibit 2. The administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718, and found, as the parties stipulated, that the miner had twenty-two years

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<sup>1</sup> Claimant is the estate of the miner. The miner died on December 11, 2002 while his claim was pending. Director’s Exhibit 11.

of coal mine employment. The administrative law judge found, however, that the evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4), and insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence was not sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (4).<sup>2</sup> Employer responds, urging affirmance of the administrative law judge's decision denying benefits. The Director, Office of Workers' Compensation Programs, has declined to respond.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>3</sup> 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).

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment. *See* 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. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

At the outset, we note that claimant has not challenged the administrative law judge's finding that the evidence failed to establish total disability at Section 718.204(b)(2)(i)-(iv). The Board's circumscribed scope of review requires that a party challenging the Decision and Order below demonstrate why substantial evidence does not support the result reached or why 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); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

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<sup>2</sup> The administrative law judge's findings that pneumoconiosis could not be established at 20 C.F.R. §718.202(a)(2) and (3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-170 (1983).

<sup>3</sup> The law of the United States Court of Appeals for the Sixth Circuit is applicable, as the miner was employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 3.

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.

Because claimant has failed to challenge the administrative law judge's finding that total disability was not established at Section 718.204(b)(2)(i)-(iv), the administrative law judge's finding thereunder must be affirmed. Because claimant failed to establish total disability, an essential element of entitlement, *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*), the administrative law judge properly denied benefits on this claim and we need not consider claimant's arguments concerning the existence of pneumoconiosis at Section 718.202(a)(1) and (4).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge