

BRB No. 99-0956 BLA

VELMA JEAN BOWLING	)	
(o/b/o and Widow of TROY L.	)	
BOWLING)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT OF	)	
LABOR	)	
	)	
Respondent	)	DECISION AND ORDER

Appeal of the Decision and Order - Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

McKinnley Morgan, Hyden, Kentucky, for claimant.

Barry H. Joyner (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order - Denial of Benefits (98-BLA-

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<sup>1</sup> Claimant is the widow of the miner, Troy L. Bowling, who died on November 11, 1996. Director's Exhibit 21. The miner filed his most recent

1223) of Administrative Law Judge Thomas F. Phalen, Jr. on a miner's claim and a survivor's 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). Initially, the administrative law judge determined that this case involves the consolidation of a duplicate miner's claim filed on March 20, 1995 and a survivor's claim filed on July 2, 1997.<sup>2</sup> In addition, the administrative law judge

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application for benefits on March 20, 1995. Director's Exhibit 1. Claimant filed her application for survivor's benefits on July 2, 1997. Director's Exhibit 21. Both claims are presently pending.

<sup>2</sup> The miner filed his initial claim with the Social Security Administration (SSA) on March 23, 1973. Director's Exhibit 18. This claim was denied on July 11, 1975 and the denial affirmed by the SSA Appeals Council on September 29, 1975. *Id.* Following the miner's election of review by SSA, the claim was again denied on June 22, 1979. *Id.* The claim was thereafter transferred to the Department of Labor. Following a formal hearing, Administrative Law Judge Robert L. Hillyard denied benefits in a Decision and Order issued on February 5, 1982. In denying benefits, Judge Hillyard initially credited the miner with ten years and three months of coal mine employment. However, he found the evidence insufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1)-(4) and also found the evidence insufficient to establish entitlement to benefits under 20 C.F.R. Part 410, Subpart D. *Id.*

The miner filed a second application for benefits on December 27, 1988. Director's Exhibit 19. This claim was denied by the district director on June 8, 1989, based on his finding that the miner failed to establish the existence of pneumoconiosis or a totally disabling respiratory impairment and, therefore, since this was a duplicate claim, the miner failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309. *Id.*

The miner filed his third and current application for benefits on March 20, 1995. Director's Exhibit 1. This claim was denied by the district director on May 13, 1996, finding that the new evidence failed to establish the existence of pneumoconiosis, a totally disabling respiratory impairment, or a material change in conditions. Director's Exhibit 17. The case was thereafter transferred to the Office Administrative Law Judges. Director's Exhibit 20. Following the miner's death on November 11, 1996 and pursuant to the request of the miner's widow (claimant), the case was remanded to the district director to allow claimant the opportunity to file a survivor's claim and to consolidate her claim with the miner's current claim. Director's Exhibit 21 at 137.

excluded two exhibits submitted post-hearing by claimant inasmuch as one of the exhibits was already contained in the record and the second exhibit was not submitted by claimant within twenty days of the formal hearing. Addressing the miner's claim, the administrative law judge noted that the previous claim was denied because the miner failed to establish the existence of pneumoconiosis arising out of coal mine employment or total respiratory disability due to pneumoconiosis and, therefore, the new evidence must establish one of these elements to establish a material change in conditions pursuant to 20 C.F.R. §725.309. Weighing the newly submitted evidence, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) and also insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Therefore, the administrative law judge found the newly submitted evidence insufficient to establish a material change in conditions in the miner's claim pursuant to Section 725.309. Addressing the merits of the survivor's claim, the administrative law judge found the evidence of record insufficient to establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c)(1)-(3). Accordingly, the administrative law judge denied benefits in both the miner's claim and the survivor's claim.

In challenging the administrative law judge's denial of benefits, claimant generally contends that the administrative law judge erred in finding that the evidence is insufficient to establish entitlement to benefits. In response, the Director, Office of Workers' Compensation Programs (the Director), urges affirmance of the administrative law judge's denial of benefits, contending that claimant failed to allege any specific error in the administrative law judge's Decision and Order. In the alternative, the Director urges affirmance of the administrative law judge's denial of benefits in the survivor's claim under Section 718.205(c), as supported by substantial evidence. However, with respect to the miner's claim, the Director states that the administrative law judge erred in his consideration of the new evidence in determining that this evidence was insufficient to establish a material change in conditions pursuant to Section

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Claimant filed her survivor's claim on July 2, 1997. Director's Exhibit 21 at 123.

725.309. Therefore, the Director contends that the Board may vacate the administrative law judge's Section 725.309 findings and remand the case for further consideration of the miner's claim.

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

In challenging the administrative law judge's denial of benefits, claimant maintains that she has established that the miner was totally disabled from a pulmonary standpoint. In support of this position, claimant merely sets forth medical evidence supportive of her position. In particular, claimant states that the miner worked in the coal mines for more than ten years and that she submitted the reports of Drs. Scanlon and Pampati, who were of the opinion that claimant suffered from chronic obstructive pulmonary disease.

Claimant, however, fails to brief her allegations in terms of relevant law and fails to allege specific legal or factual errors on the part of the administrative law judge, but rather, merely recites medical evidence favorable to her 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 brief sufficiently allegations respecting law and evidence, as required by 20 C.F.R. §802.211(b). 20 C.F.R. §802.211(b); 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 fails to substantiate or adequately brief the allegations of error, we decline to address claimant's general contention that the administrative law judge erred in finding the evidence insufficient to establish entitlement to benefits. See *Cox, supra*; *Sarf, supra*; *Fish, supra*.

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

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge