

BRB No. 97-0966 BLA

FRANK S. LAKE )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 BLACK MOUNTAIN COAL MINING CO.) DATE ISSUED:  
 )  
 and )  
 )  
 EMPLOYERS INSURANCE OF WAUSAU )  
 )  
 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 of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Kenneth S. Stepp (Kenneth S. Stepp, P.A., P.S.C.), Manchester, Kentucky, for claimant.

Bonnie Hoskins (Stoll, Keenon & Park, LLP), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-668) of Administrative Law Judge Robert L. Hillyard 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 U.S.C. §901 *et seq.* (the Act). The administrative law judge found, and the parties stipulated to, sixteen years of coal mine employment. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>1</sup> The administrative law judge determined that the evidence of record was sufficient to

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<sup>1</sup> Claimant filed for benefits on November 28, 1994. Director's Exhibit 1.

establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.203. The administrative law judge concluded, however, that the evidence of record was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant generally asserts that the administrative law judge erred in failing to find total disability established. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has indicated that he will not participate in this appeal.

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

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Claimant makes a general contention that he has established that he is totally disabled but cites to no specific error made by the administrative law judge in weighing the medical evidence of record. Claimant's Brief at 5-7. 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. *See* 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). As we have emphasized previously, the Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order with specificity and demonstrate that substantial evidence does not support the result reached or that 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); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *Sarf, supra*. 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 x-ray and lay evidence is sufficient to establish entitlement, *see* Claimant's Brief at 5-7, 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. §718.204(c). Thus, the Board has no basis upon which to review the decision.<sup>2</sup> Inasmuch as

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<sup>2</sup>The administrative law judge rationally concluded that the evidence of record failed to establish total disability pursuant to 20 C.F.R. §718.204(c) as none of the objective tests are qualifying, there is no evidence of cor pulmonale and no physician opined that claimant was totally disabled due to a respiratory or pulmonary impairment. Director's Exhibits 10, 11, 12, 26; Employer's Exhibit 2; Claimant's Exhibit 2.

the administrative law judge properly considered the medical evidence of record and determined that it failed to prove an essential element of entitlement, we affirm the administrative law judge's denial of benefits.<sup>3</sup> *See Trent, supra; Perry, supra.*

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge

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<sup>3</sup> We note claimant's assertion that the lay testimony and x-ray evidence establishes total disability. Since the administrative law judge properly found that the medical evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4), lay testimony alone cannot alter the administrative law judge's finding. *See* 20 C.F.R. §718.204(d)(2); *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). Additionally, a positive x-ray interpretation is not indicative of total disability. *York v. Director, OWCP*, 7 BLR 1-641 (1985); *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983).