

BRB No. 01-0631 BLA

A.B. JONES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY	)	DATE ISSUED:
	)	
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 of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Phyllis L. Robinson, Manchester, Kentucky, for claimant.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (1996-BLA-1313) of Administrative Law Judge Joseph E. Kane 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).<sup>1</sup> The administrative law judge found that the instant case was a request for

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<sup>1</sup>The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

modification and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>2</sup> Decision and Order at 2-4, 11-12. The administrative law judge found, and the parties stipulated to, at least twenty-nine years of qualifying coal mine employment. Decision and Order at 3; Director's Exhibit 111. The administrative law judge, noting the proper modification standard, concluded that implying that the newly submitted pulmonary function study evidence of record was sufficient to establish total disability pursuant to 20 C.F.R. §718.204 and thus establishing a change in conditions pursuant to 20 C.F.R. §725.310 (2000),<sup>3</sup> the evidence, however, was insufficient to establish that the total disability was due to pneumoconiosis. Decision and Order at 12-13. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in relying upon the opinions of nonexamining and nontreating physicians and further generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter asserting that the revised regulations will not impact this case and further indicating that he will not participate with respect to the merits in this appeal.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and the conclusions of law are rational, supported by substantial evidence, and in accordance with the 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).

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<sup>2</sup>Claimant filed his claim for benefits on October 25, 1988, which was finally denied on September 21, 1994, as the evidence failed to establish total disability. Director's Exhibits 1, 78, 86. Claimant filed a modification request on October 14, 1994, which was denied on September 12, 1995. Director's Exhibit 101. Claimant filed a second modification request, the subject of the instant appeal, on December 12, 1995. Director's Exhibit 102.

<sup>3</sup>The amendments to the regulation at 20 C.F.R. §725.310 do not apply to claims, such as this, which were pending on January 19, 2001; rather, the version of this regulation as published in the 2000 Code of Federal Regulations is applicable. *See* 20 C.F.R. §725.2(c).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). 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*).

Claimant generally contends that the administrative law judge erred in failing to award benefits. The Board is not empowered to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of power between the administrative law judge as the trier-of-fact, and the Board as the review tribunal. *See* 20 C.F.R. §802.301(a) (2000); *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 and address 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) (2000); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'd* 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 medical evidence of record was sufficient to establish entitlement to benefits, *see* Claimant's Brief at 2-4, 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. §725.310 (2000) and 20 C.F.R. Part 718. Thus, as claimant's counsel has failed to adequately raise or brief any issue arising from the administrative law judge's Decision and Order denying benefits, the Board has no basis upon which to review the decision.

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