BRB No. 97-1456 BLA

HARLIN GAY, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MCI MINING CORP.	)	DATE ISSUED:
STAR FIRE COALS, INC.	)	
	)	
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 Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

McKinnley Morgan, Hyden, Kentucky, for claimant.

Lois A. Kitts (Baird, Baird, Baird & Jones, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-269) of Administrative Law Judge Thomas F. Phalen, 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 U.S.C. §901 *et seq.* (the Act). Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] The administrative law judge determined that the evidence of record was insufficient to establish the existence of pneumoconiosis or total disability pursuant to 20 C.F.R. §§718.202(a), 718.204(c). Accordingly, benefits were denied. On

[1] Claimant filed for benefits on April 20, 1993. Director's Exhibit 1.

appeal, claimant generally asserts that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has indicated that he will not participate on 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).

Claimant makes a general contention that he has established entitlement to benefits but cites to no specific error made by the administrative law judge in weighing the medical evidence of record. Claimant's Brief at 1-2. 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 medical evidence is sufficient to establish entitlement, *see* Claimant's Brief at 1-2, 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. Thus, the Board has no basis upon which to review the decision.[2] Inasmuch as the administrative law judge properly considered the

[2] The administrative law judge rationally concluded that the evidence of record failed to establish the existence of pneumoconiosis as the preponderance of the x-ray interpretations were found to be negative by readers with superior qualifications, there was no biopsy evidence of record, the presumptions at 20 C.F.R. §718.202(a)(3) were not applicable and the preponderance of the medical opinion evidence was negative for pneumoconiosis. Decision and Order at 3-8; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). The administrative law judge further permissibly found that the evidence of record was insufficient to establish total disability because none of the valid objective tests are qualifying, there is no evidence of cor pulmonale and because the preponderance of the physicians opined that claimant was not totally disabled due to a

evidence of record and determined that it failed to establish the existence of pneumoconiosis or total disability pursuant to Section 718.202(a) and 718.204(c), we affirm the administrative law judge's denial of benefits. *See Trent, supra; Perry, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

---

respiratory or pulmonary impairment. Decision and Order at 9; Director's Exhibits 6, 7, 8, 27, 29; Employer's Exhibits 2, 4, 5; *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986); *Perry, supra*.