BRB No. 00-0323 BLA

JERRY M. MCCOY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
P.M. CHARLES COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
A.T. MASSEY	)	
	)	
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 - Denial of Second Modification Request of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (1999-BLA-0353) of Administrative Law Judge Robert L. Hillyard denying modification and 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

[1] Claimant initially filed for benefits on February 8, 1989. Director's Exhibit 1. Administrative Law Judge J. Michael O'Neill concluded that claimant failed to

administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge determined that the newly submitted evidence of record was insufficient to establish the existence of pneumoconiosis or total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). The administrative law judge therefore concluded that the evidence of record was insufficient to establish either a change of condition or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310. Accordingly, benefits were denied. On appeal, claimant generally asserts 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 (the Director), has indicated that he will not participate in this appeal unless requested to do so by the Board.

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 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.

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establish the existence of pneumoconiosis or total disability pursuant to 20 C.F.R. §§718.202(a), 718.204(c) and denied benefits. Director's Exhibit 36. The Board affirmed the denial in *McCoy v. P.M. Charles Coal Co.*, BRB No. 92-2025 BLA (Sept. 27, 1993)(unpub.). Director's Exhibit 45. Claimant filed an appeal to the United States Court of Appeals for the Sixth Circuit, but the appeal was dismissed for want of prosecution. Director's Exhibit 48. Claimant filed a modification request on June 14, 1994, Director's Exhibit 49, which Judge O'Neill denied on May 23, 1997. Director's Exhibit 84. The Board affirmed the denial in *McCoy v. P.M. Charles Coal Co.*, BRB No. 97-1293 BLA (Apr. 28, 1998)(unpub.). Director's Exhibit 91. The instant request for modification was filed on July 9, 1998. Director's Exhibit 92.

§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 asserting that the medical opinion of Dr. Sundaram 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. §§725.310, 718.202, 718.204. Thus, the Board has no basis upon which to review the decision. Inasmuch as the administrative law judge properly considered the newly submitted evidence of record and determined that it failed to establish modification pursuant to Section 725.310, we affirm the administrative law judge's denial of benefits. *See Consolidation Coal Co. v.*

[2] In addressing whether a change of conditions was established pursuant to 20 C.F.R. §725.310, the administrative law judge permissibly concluded that the newly submitted evidence of record failed to establish the existence of pneumoconiosis as the preponderance of the x-ray interpretations was 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

Worrell, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994).

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preponderance of the newly submitted medical opinion evidence was negative for pneumoconiosis. Decision and Order at 8-12; *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 properly found that the newly submitted evidence was insufficient to establish total disability because none of the objective tests is qualifying, there is no evidence of cor pulmonale and because none of the credible physicians' opinions conclude that claimant was totally disabled due to a respiratory or pulmonary impairment. Decision and Order at 13-14; Employer's Exhibits 3-6; Claimant's Exhibit 1; *see Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986). The administrative law judge also rationally concluded that there was no mistake of fact in the prior decision and thus properly determined that claimant failed to establish modification. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); Decision and Order at 11-12.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge