

BRB No. 07-0316 BLA

F.N. )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 SHAUNA DAREASE COAL, )  
 INCORPORATED )  
 )  
 and ) DATE ISSUED: 11/30/2007  
 )  
 THE FIRE & CASUALTY COMPANY OF )  
 CONNECTICUT )  
 )  
 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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Leroy Lewis (Law Office of Phillip Lewis), Hyden, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (06-BLA-5185) of Administrative Law Judge Donald W. Mosser denying benefits on a subsequent 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 accepted employer's stipulation that claimant worked for at least twenty-five years in coal mine employment, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence developed since the prior denial of benefits did not establish that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv).<sup>2</sup> Consequently, the administrative law judge found that the new evidence did not establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). *See White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the evidence establishes that his total disability is due to pneumoconiosis at 20 C.F.R. §718.204(c). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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 that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d). The "applicable conditions of entitlement" are "those conditions upon

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<sup>1</sup> Claimant filed his first claim on June 1, 1987. Director's Exhibit 1. It was finally denied on May 22, 1991, because the evidence did not establish that claimant was totally disabled by a respiratory or pulmonary impairment. *Id.* Claimant filed his most recent claim on November 16, 2004. Director's Exhibit 3.

<sup>2</sup> The administrative law judge found that the issue of total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) was moot, because claimant failed to establish total disability at 20 C.F.R. §718.204(b).

which the prior denial was based.” 20 C.F.R. §725.309(d)(2). Claimant’s prior claim was denied because he failed to establish that he was totally disabled. Director’s Exhibit 1. Consequently, claimant had to submit new evidence establishing this element of entitlement to obtain review of the merits of his claim. 20 C.F.R. §725.309(d)(2), (3).

As noted above, claimant, who is represented by counsel, argues generally that he has established that his total disability is due to pneumoconiosis, an element of entitlement that the administrative law judge determined was moot because claimant did not establish that he has a totally disabling respiratory or pulmonary impairment. Claimant further states that “it is obvious the administrative law judge erred in his decision.” Claimant’s Brief at 4. Claimant’s brief does not provide an adequate basis for review of the administrative law judge’s finding that claimant did not establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2). Because the Board is not empowered to engage in a *de novo* proceeding or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301. In this case, claimant’s statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that claimant did not establish that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2). Consequently, we affirm the administrative law judge’s finding. *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).

In view of our decision to affirm the administrative law judge’s finding that the evidence developed since the prior denial of benefits did not establish total disability at 20 C.F.R. §718.204(b)(2), we also affirm the administrative law judge’s finding that the new evidence did not establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d). *See White*, 23 BLR at 1-7.

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