

BRB No. 12-0203 BLA

WILLIAM TAYLOR, JR. )  
 )  
 Claimant-Petitioner )  
 )  
 v. ) DATE ISSUED: 11/26/2012  
 )  
 INLAND STEEL COAL COMPANY )  
 )  
 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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose, LLC), Johnstown, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (10-BLA-5100) of Administrative Law Judge Michael P. Lesniak, denying benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves a subsequent claim filed on January 22, 2009.<sup>1</sup> After noting that the

---

<sup>1</sup> The present claim is claimant's fourth application for benefits. The administrative law judge denied claimant's most recent claim on August 19, 1998, because claimant did not establish the existence of a totally disabling pulmonary or respiratory impairment. Director's Exhibit 1. Claimant filed his current claim on

parties stipulated that claimant has pneumoconiosis arising out of his thirty-one years of coal mine employment,<sup>2</sup> the administrative law judge found that the new evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant had not established that one of the applicable conditions of entitlement had changed since the date upon which the denial of claimant's prior claim became final. 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends generally that the administrative law judge erred in finding that the new medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, a 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. 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); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2). Director's Exhibit 1. Consequently, to obtain

---

January 22, 2009, more than one year after the final denial of his previous claim. 20 C.F.R. §725.309(d); Director's Exhibit 3.

<sup>2</sup> The record reflects that claimant's coal mine employment was in Pennsylvania. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

review of the merits of his claim, claimant had to submit new evidence establishing that he is totally disabled. 20 C.F.R. §725.309(d)(2), (3).

Claimant contends that the administrative law judge erred in finding that the new medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).<sup>3</sup> Claimant, however, alleges no error in regard to the administrative law judge's consideration of the opinions of Drs. Martin, Fino, Altmeyer and Begley.<sup>4</sup> 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). 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. Consequently, the administrative law judge's finding that the new medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) is affirmed.

In light of our affirmance of the administrative law judge's findings that the new evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's finding that claimant did not establish a change in an applicable condition of entitlement under 20 C.F.R. §725.309.

---

<sup>3</sup> Because claimant does not challenge the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>4</sup> Although Drs. Martin and Fino opined that claimant is not totally disabled, the administrative law judge discredited their opinions, finding that Dr. Martin's opinion was based on an incomplete review of the medical evidence, and that Dr. Fino's opinion was not well-reasoned. Decision and Order at 7; Director's Exhibits 18, 20. The administrative law judge found that Dr. Begley's opinion, that claimant's mild impairment would prevent him from returning to his coal mine employment, was reasoned. Decision and Order at 8; Director's Exhibit 7. However, the administrative law judge found that Dr. Altmeyer's contrary opinion, that claimant does not suffer from a totally disabling pulmonary impairment, was also entitled to "significant weight." Decision and Order at 8; Employer's Exhibit 2, 5. The administrative law judge, therefore, found that the preponderance of the medical opinion evidence did not support a finding of a totally disabling pulmonary impairment. *Id.*

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

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge