BRB No. 00-0145 BLA

RODERICK D. FELTNER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Harold Rader, Manchester, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-151) of Administrative Law Judge Daniel J. Roketenetz 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). The administrative law judge credited claimant with nineteen and one-half years of coal mine employment based on the parties stipulation at the hearing, and since the claim was filed on September 24, 1997, he adjudicated it pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(1)-(4), 718.203 (b) and insufficient to demonstrate the presence of a totally disabling respiratory impairment due to pneumoconiosis at 20 C.F.R. §718.204(c), (b). Accordingly, benefits were denied. On appeal, claimant challenges the findings of the administrative law judge on

the existence of pneumoconiosis and the presence of a totally disabling respiratory impairment due to pneumoconiosis. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.[1]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement.[2] *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

[1] Since the parties stipulated to nineteen and one-half years of coal mine employment at the hearing, and employer conceded to its designation as the responsible operator, we affirm these findings of the administrative law judge. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] Since the miner's last coal mine employment took place in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Based on his review of the x-ray evidence of record, the administrative law judge properly found that five of the x-ray readings of record were negative for the existence of pneumoconiosis by qualified B-readers while the only positive reading was by a reader who was not a B-reader. Decision and Order at 4. Contrary to claimant's assertion, therefore, the administrative law judge permissibly deferred to the x-ray interpretations of the more qualified readers in finding that the x-ray evidence did not establish the existence of pneumoconiosis. *See* 20 C.F.R. §718.202(a); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Taylor v. Director, OWCP*, 9 BLR 1-22 (1986). The administrative law judge, thus, properly found that claimant failed to establish the existence of pneumoconiosis by x-ray as he correctly determined that the preponderance of the x-ray interpretations by the qualified readers was negative for the existence of pneumoconiosis.[3] *See* 20 C.F.R. §718.202(a)(1); *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). We, therefore, affirm the finding of the administrative law judge that the evidence of record

[3] The record contains six x-ray interpretations of three x-rays dated April 12, 1995, October 6, 1997, and June 1, 1998. *See* Director's Exhibits 8, 9, 17, 19; Employer's Exhibits 1-3. Dr. Anderson, whose radiological qualifications are not of record, interpreted the April 12, 1995 x-ray as positive for the existence of pneumoconiosis. *See* Director's Exhibit 17. All the other x-ray interpretations were negative for the existence of pneumoconiosis. *See* Director's Exhibits 8, 9, 19; Employer's Exhibits 1-3.

was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1).[4]

At Section 718.202(a)(4), claimant has not challenged the rationale provided by the administrative law judge for finding the evidence of record insufficient to establish the existence of pneumoconiosis. Other than asserting that the administrative law judge selectively analyzed the x-ray evidence, Claimant's Brief at 4-5, claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law. Thus, the Board has no basis upon which to review this part of the administrative law judge's decision. The Board is not required to undertake a *de novo* adjudication of the evidence on this issue. 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 a review tribunal. *See* 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). The Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order 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*. We must, therefore, affirm the finding of the administrative law judge that the evidence of record was insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4). We, therefore, affirm the finding of the administrative law judge at Section 718.204(a). As claimant failed to established the existence of pneumoconiosis, an essential element of entitlement, benefits must be denied. *Trent, supra*; *Perry, supra*.

[4] The administrative law judge also correctly determined that since the record contained no biopsy or autopsy evidence, claimant did not establish the existence of pneumoconiosis at Section 718.202(a)(2) and that claimant, a living miner, was not entitled to the presumptions at Section 718.202 (a)(3) as this claim was filed after January 1, 1982 and the record does not contain any evidence of complicated pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(3), 718.304, 718.305(e), 718.306. These findings are affirmed as unchallenged on appeal. *Skrack, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge