BRB No. 03-0284 BLA

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| BOBBY D. MANN | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | DATE ISSUED: 09/24/2003 |
| | ) | |
| TURNER BROTHERS, INCORPORATED | ) | |
| | ) | |
| and | ) | |
| | ) | |
| OLD REPUBLIC INSURANCE COMPANY | ) | |
| | ) | |
| 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 Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Benjamin J. Curtis (Curtis & Sides), Poteau, Oklahoma, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (2001-BLA-00566) of Administrative Law Judge Pamela Lakes Wood denying modification and benefits on a duplicate 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).[1] This case has been before the Board previously and involves a duplicate claim.[2] In the original Decision and Order (92-BLA-365), Administrative Law Judge Robert S. Amery adjudicated this duplicate claim pursuant to 20 C.F.R. Part 718 and found that claimant established at least fifteen years of qualifying coal mine employment and the existence of pneumoconiosis pursuant to 20 C.F.R. ' ' 718.202(a)(4) and 718.203(b) (2000), but failed to establish total respiratory impairment pursuant to 20 C.F.R. ' 718.204(c) (2000) and a material change in conditions pursuant to 20 C.F.R. ' 725.309(d) (2000). Accordingly, benefits were denied. Claimant appealed and in *Mann v. Turner Brothers, Inc.*, BRB No. 95-1197 BLA (Feb. 15, 1996)(unpub.), the Board affirmed the administrative law judge=s findings regarding the length of coal mine employment and pursuant to 20 C.F.R. ' ' 718.202(a)(4), 718.203(b) and 718.204(c)(1)-(3) (2000) as unchallenged on appeal, as well as his finding pursuant to 20 C.F.R. ' 718.204(c)(4) (2000) on the merits. The Board thus affirmed the administrative law judge=s finding that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. ' 718.204(c) (2000) and affirmed the denial of benefits. The Board did not address the administrative law judge=s finding pursuant to 20 C.F.R. ' 725.309 (2000). Claimant filed an appeal to the United

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002).

[2]Claimant filed his initial claim for black lung benefits on September 23, 1974, which the district director denied on August 14, 1979. Decision and Order at 3; Director=s Exhibit 31. Claimant filed his second claim on April 25, 1983, which the district director finally denied on March 14, 1984. Decision and Order at 3; Director=s Exhibit 30. Claimant took no further action until he filed the present claim on November 17, 1986. Decision and Order at 3; Director=s Exhibit 1.

States Court of Appeals for the Tenth Circuit, which affirmed the Board=s decision in an unpublished opinion. Director=s Exhibit 52. Claimant subsequently filed correspondence with the district director indicating his dissatisfaction with the court=s decision and indicating a desire to seek modification, but no action was taken on his request until claimant filed another application for benefits on March 9, 1998. Thereafter, the district director determined that the earlier correspondence was a modification request and, based on newly submitted evidence, on September 5, 2000, the district director granted benefits. The case was transmitted to the Office of Administrative Law Judges for a hearing at employer=s request on March 9, 2000.

In her Decision and Order, Administrative Law Judge Pamela Lakes Wood (the administrative law judge) found that the evidence established at least fifteen years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge further found that the newly submitted medical evidence of record, in conjunction with the previously submitted evidence of record, was sufficient to establish the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. ' 718.204(b)(2)(i)-(iv). The administrative law judge therefore concluded that the evidence of record was sufficient to establish a change in conditions for the purpose of modification pursuant to 20 C.F.R. ' 725.310 (1999).[3] Additionally, the administrative law judge concluded that claimant established a material change in conditions for the purpose of the duplicate claim pursuant to 20 C.F.R. ' 725.309(d) (2000). On the merits, however, the administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4). Accordingly, benefits were denied. On appeal, claimant generally challenges the administrative law judge=s findings under Section 718.202(a)(4). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers= Compensation Programs, 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant

[3] The amendments to the regulations at 20 C.F.R ' ' 725.309 and 725.310 do not apply to claims, such as this, which were pending on January 19, 2001. *See* 20 C.F.R. ' 725.2(c).

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, 718.201, 718.202, 718.203, 718.204. Failure to establish any one of these requisite elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant makes a general contention that he has established the existence of pneumoconiosis by the medical opinion evidence pursuant to Section 718.202(a)(4), and 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 3-4. 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); *Sarf*, 10 BLR 1-119; *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). 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*, 10 BLR 1-119; *Fish*, 6 BLR 1-107.

In this case, other than asserting that the administrative law judge erred in denying benefits, claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and the applicable law pursuant to 20 C.F.R. '718.202(a)(4).[4] Inasmuch as the administrative law judge has considered all of the evidence of record and claimant fails to specify any factual

[4] Claimant notes that the record contains a positive x-ray reading by Dr. Navani. Claimant=s Brief at 4. In his consideration of the x-ray evidence pursuant to Section 718.202(a)(1), the administrative law judge noted that Dr. Navani, a dually qualified B reader and Board-certified radiologist, interpreted the November 2, 1999, x-ray as positive for pneumoconiosis, but that there were five equally qualified radiologists who interpreted this same x-ray as negative for pneumoconiosis. Decision and Order at 10. The administrative law judge permissibly concluded that the preponderance of x-ray evidence did not support a finding of pneumoconiosis under 20 C.F.R. '718.202(a)(1). *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc)*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 10.

or legal errors in the administrative law judge=s findings or to brief his allegations in terms of the relevant law, we have no substantial issue to review on appeal. We therefore decline to review the administrative law judge=s Decision and Order and affirm the administrative law judge=s denial of benefits.[5] *See Sarf*, 10 BLR 1-119; *Fish*, 6 BLR 1-107.

[5] A review of the record indicates that the administrative law judge=s findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a)(1)-(4) are nevertheless supported by substantial evidence. *Clark*, 12 BLR 1-149; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge