

BRB No. 96-0753 BLA

EARL E. ASHER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
SANDY FORK MINING COMPANY,)	
INCORPORATED)	
)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Tommie L. Weatherly (Weatherly Law Offices), London, Kentucky, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-0601) of Administrative Law Judge Thomas M. Burke denying benefits on a claim filed pursuant to the

¹ Claimant is Earl E. Asher, the miner, whose first claim for benefits filed on March 13, 1992 was finally denied on August 19, 1992. Director's Exhibit 23. Claimant filed the present claim on April 29, 1994. Director's Exhibit 1.

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 accepted the parties' stipulation to ten years of coal mine employment and found this claim to be a duplicate claim pursuant to 20 C.F.R. §725.309(d). The administrative law judge found that the evidence submitted with the present claim failed to establish any element of entitlement pursuant to 20 C.F.R. §§718.202(a), 718.204 and concluded that claimant therefore failed to establish a material

change in conditions pursuant to Section 725.309(d). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the evidence establishes that he is totally disabled due to pneumoconiosis arising out of coal mine employment. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.²

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 law. 33 U.S.C. § 921(b)(3), as incorporated into the Act by 30 U.S.C. § 932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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 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); *Cox v. Benefits Review Board*, 791 F. 2d 445, 9 BLR 2-46 (6th Cir. 1986); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). 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); *Cox, supra*; *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish, supra*; *Sarf, supra*. A petitioner who fails to comply with the requisite regulations provides the Board with no basis to reach the merits of an appeal. See *Cox, supra*. In the instant case, claimant generally asserts that the x-ray evidence and the opinions of Drs. Dahhan, Baker, Broudy, and Wright establish entitlement to benefits. Claimant's Brief at 2-5. Claimant, however, fails to identify any error made by the administrative law judge in his evaluation of the evidence or in his application of law pursuant to 20 C.F.R. Part 718. Thus, as claimant's counsel has failed to adequately raise or brief any issues arising from the administrative law judge's Decision and Order denying benefits, the Board has no basis upon which to review the decision. Thus, we decline to review the Decision

² We affirm as unchallenged on appeal the administrative law judge's finding regarding length of coal mine employment. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

and Order of the administrative law judge and affirm the administrative law judge's denial of benefits. See *Sarf, supra*; *Cox, supra*.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

_____ NANCY S.
DOLDER
Administrative Appeals Judge