

BRB No. 95-0371 BLA

SIDNEY W. DIXON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Robert M. Williams, Charleston, West Virginia, for claimant.

Rodger Pitcairn, (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

Before: SMITH, BROWN, and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (92-BLA-0603) of Administrative Law Judge Paul H. Tietler 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). This case is before the Board for the second time. In *Dixon v. Director, OWCP*, BRB No. 88-1500 BLA (Dec. 19, 1990)(unpub.), the Board vacated the denial of benefits and remanded the case for the administrative law judge to explain his conclusion that claimant established only five and one-quarter years of coal mine employment and to consider all of the relevant evidence regarding whether claimant's pneumoconiosis arose out of

¹ Claimant is Sidney W. Dixon, the miner, who filed an application for benefits with the Department of Labor on February 20, 1980. Director's Exhibit 1.

coal mine employment. Slip op. at 2-3. The Board also remanded the case for claimant to undergo a complete pulmonary examination. *Id.* at 4-5.

On remand, the administrative law judge² relied upon claimant's Social Security records to find five and three-quarter years of coal mine employment established.³ Decision and Order at 4. Adjudicating the claim pursuant to 20 C.F.R. Part 727,⁴ the administrative law judge found invocation of the interim presumption established pursuant to Section 727.203(a)(1) and rebuttal established pursuant to Section 727.203(b)(2) and

² Administrative Law Judge John H. Bedford issued the first Decision and Order. Director's Exhibit 23. Because he is no longer with the Office of Administrative Law Judges, the case was assigned on remand, without objection, to Judge Teitler.

³ The administrative law judge found the Social Security records to be "the most convincing evidence of claimant's actual coal mine employment," in light of claimant's "vague and inconsistent" testimony and his co-workers' affidavits which the administrative law judge found "to be based upon faulty recollection." Decision and Order at 3-4.

⁴ As the Director notes, the administrative law judge erred in invoking the interim presumption without first determining whether claimant's pneumoconiosis arose out of coal mine employment. Director's Brief at 2-3; see 20 C.F.R. §410.490(b)(2); *Phipps v. Director, OWCP*, 17 BLR 1-39 (1992) (*en banc*) (Smith, J., concurring; McGranery, J., concurring and dissenting). Such error is harmless, see *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), in view of our disposition of this case, see discussion, *infra*.

(3). Based on his rebuttal findings, the administrative law judge found entitlement precluded under Parts 727 and 410 and, accordingly, denied benefits.

On appeal, claimant asserts that his testimony and the affidavits of his co-workers establish sixteen years of coal mine employment, that "the evidence is overwhelmingly in favor of the claimant's diagnosis of . . . pneumoconiosis," and that claimant's testimony concerning his shortness of breath and productive cough is sufficient to establish "that the claimant is in fact permanently and totally disabled as a result of his occupational disease." Claimant's Brief at pp. 1-3 (unpaginated). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's Decision and Order.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant offers no specific legal or factual challenge to the administrative law judge's findings. Because claimant fails to state with specificity why the administrative law judge's conclusions are unsupported by substantial evidence, are irrational, or are contrary to law, the Board has no basis upon which to review these findings. See 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); see also *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986). Therefore, we affirm the administrative law judge's findings that the evidence is insufficient to establish entitlement pursuant to Part 727 or Part 410, inasmuch as the Board is not empowered to reweigh the evidence. See *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

_____NANCY S. DOLDER
Administrative Appeals Judge