

BRB No. 96-1681 BLA

ROBERT OWSLEY)		
)		
Claimant-Petitioner)		
)		
v.)		
)		
B & L'S CONTRACTING, 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. Roketentz, Administrative Law Judge, United States Department of Labor.

Daniel A. Beatty (Law Offices of Wayne R. Reynolds, P.C.), Belleville, Illinois, for claimant.

Mary A. Schopper (Locke, Reynolds, Boyd & Weisell), Indianapolis, Indiana, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (94-BLA-1094) of Administrative Law Judge Daniel J. Roketentz 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 found that the parties stipulated that claimant has at least thirteen years of qualifying coal mine employment, but that the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant generally contends

¹Claimant is Robert Owsley, the miner, who filed a claim for benefits on April 23, 1993. Director's Exhibit 1.

that the administrative law judge erred in denying benefits.² Employer responds urging affirmance of the Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate in this appeal.

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Claimant generally contends that the administrative law judge's Decision and Order is not supported by substantial evidence. Claimant's Brief at 2-4. 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). 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

²On March 15, 1997, April 9, 1997, and July 31, 1997, claimant, on his own behalf, filed letters with the Board containing additional evidence. Claimant is advised that the Board's review of this case is limited to the record developed at the hearing before the administrative law judge and the briefs and statements filed by the parties. 20 C.F.R. §802.301. If claimant believes he has new evidence that establishes a change in conditions or a mistake of fact in the administrative law judge's decision, claimant may request modification with the district director. 20 C.F.R. §725.310.

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*.

In the instant claim, other than generally asserting that the record contains x-ray evidence indicating significant abnormalities, claimant fails to make any allegations of error in the administrative law judge's finding pursuant to Section 718.202(a). As claimant's counsel has failed to adequately raise or brief any issues arising from the administrative law judge's finding pursuant to Section 718.202(a), the Board has no basis upon which to review the finding. Thus, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) and the denial of benefits.³

³We note 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) is supported by substantial evidence. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *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 benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL
Chief Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge