BRB No. 97-0670 BLA

PRESTON D. KILGORE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LEE WEST COAL COMPANY	)	
	)	
and	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
	)	DATE ISSUED:
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 of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

William L. Roberts, Pikeville, Kentucky, for claimant.

John L. Griffith (Wells, Porter, Schmitt & Jones), Paintsville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-422) of Administrative Law Judge Rudolf L. Jansen 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). After accepting the parties' stipulation of fifteen years of coal mine employment, the administrative law judge considered the evidence of record and concluded that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. On appeal, claimant generally challenges the

administrative law judge's findings pursuant to Section 718.202(a)(1) and (4). Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has indicated that he will not participate in this appeal.

The Board's scope of review is defined by statute. We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. 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 establish 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 of claimant to establish any of these elements precludes entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

On appeal, claimant generally contends that the administrative law judge erred by failing to find the existence of pneumoconiosis established pursuant to Section 718.202(a)(1). Claimant also states that the reports of Drs. Anderson, Bassali, Baker, Harrison, Sundaram and Hashem support his claim for benefits. Claimant cites to no error made by the administrative law judge. Claimant's Brief at 2-3. 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); *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 case, other than generally asserting that the medical evidence is sufficient to establish the existence of pneumoconiosis, claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law pursuant to 20 C.F.R. §§718.202(a)(1) and (4). Thus, the Board has no basis upon which to review that finding by the administrative law judge.[1] Consequently, we

[1]Claimant's contention that the administrative law judge erred by not finding total disability established is without merit. The administrative law judge did not consider this issue as he determined that claimant had failed to establish pneumoconiosis, a requisite element of entitlement. Decision and Order at 14; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (4) as it is supported by substantial evidence.[2]

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

[2]In considering the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge permissibly accorded greater weight to the negative interpretations by physicians with superior qualifications as B-readers and board-certified radiologists, including the opinions of Drs. Sargent and Barrett, whom the administrative law judge determined were unbiased because they were not hired by either party, and concluded that the numerical weight of the evidence indicated that claimant did not suffer from pneumoconiosis. Decision and Order at 12-13; *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). The administrative law judge also properly determined that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) because the record did not contain any autopsy or biopsy evidence. The administrative law judge next properly found that none of the presumptions were applicable pursuant to 20 C.F.R. §718.202(a)(3) in this living miner's claim filed after January 1, 1982, in which there is no evidence of complicated pneumoconiosis. *See* 20 C.F.R. §§718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Lastly, at 20 C.F.R. §718.202(a)(4), the administrative law judge discussed all of the medical opinions of record, and permissibly found that the opinions of Drs. Anderson, Baker, and Sundaram, that claimant had pneumoconiosis, were entitled to less weight because the physicians failed to supply an adequate rationale for their diagnosis other than their positive x-ray interpretations. *See Anderson*, *supra*; *Taylor v. Director, OWCP*, 9 BLR 1-22 (1986); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). Thus, the administrative law judge properly concluded that the weight of the evidence indicates that claimant does not suffer from pneumoconiosis. *See Perry*, *supra*.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge