BRB No. 97-0680 BLA

RALPH EARLON TAYLOR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
WELLMORE COAL CORPORATION	)	
	)	
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 Richard E. Huddleston, Administrative Law Judge, United States Department of Labor.

Robert F. Wright, Pikeville, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-01539) of Administrative Law Judge Richard E. Huddleston 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 involves a request for modification.[1] The administrative law judge considered the newly submitted evidence and found that it failed to establish the

[1]Claimant filed his application for benefits on May 11, 1992. Director's Exhibit 1. This claim was denied on August 17, 1993 because claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R, §718.202(a). Director's Exhibit 43. Claimant appealed to the Benefits Review Board, which affirmed the denial. *Taylor v. Wellmore Coal Corp.*, BRB No. 93-2455 BLA (May 24, 1994)(unpublished). On June 21, 1994, claimant requested modification. Director's Exhibit 52.

existence of pneumoconiosis, and thus, a basis for modification pursuant to 20 C.F.R. §725.310. Accordingly, benefits were denied. On appeal, claimant generally challenges the administrative law judge's findings. 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 accord determinative weight to the x-ray interpretations and opinions of Drs. Wells, Bassali, and Myers, whom all diagnosed pneumoconiosis. Claimant cites to no error made by the administrative law judge. Claimant's Brief at 2-3 (unpaginated). 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). Thus, the Board has no basis upon which to review the findings by the administrative law judge.[2] Consequently, we affirm the

[2]We reject claimant's contention that 30 U.S.C. §923(b) of the Act requires that the positive x-ray interpretations be accepted by the administrative law judge as the prohibition against the rereading of certain x-rays is applicable only in claims filed before January 1, 1982. *See* 30 U.S.C. §923(b). Claimant's contention that he has established total disability due to pneumoconiosis is also without merit because the administrative law judge never

administrative law judge's determination that claimant failed to establish modification pursuant to Section 725.310 as it is supported by substantial evidence.[3]

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

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reached the issue of disability or causation. Decision and Order at 9.

[3]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 interpretations by physicians with superior qualifications as B-readers and board-certified radiologists, and concluded that the preponderance of the evidence indicated that claimant did not suffer from pneumoconiosis. Decision and Order at 5-6; *See 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, considering the evidence pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge discussed all of the new medical opinions of record, and permissibly found that the weight of the evidence established that claimant had a chronic pulmonary defect atrributed to his smoking history. *See Wilburn v. Director, OWCP*, 11 BLR 1-135 (1988); *Perry*, *supra*.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge