

BRB No. 97-1721 BLA

PAUL CRAWFORD)
)
 Claimant-Petitioner)
)
 v.)
)
 SHAMROCK COAL COMPANY,)
 INCORPORATED))
)
 Employer-Respondent))
)
 DIRECTOR, OFFICE OF WORKERS')) DATE ISSUED:
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)) DECISION and ORDER

Appeal of the Decision and Order on Remand - Denying Benefits of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Charley Greene Dixon, Jr., Barbourville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand - Denying Benefits (91\BLA-1157) of Administrative Law Judge Donald W. Mosser 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 procedural

history of this case is as follows. Claimant filed an application for benefits on June 6, 1983. Director's Exhibit 1. Benefits were denied by the claims examiner, Director's Exhibits 17-18, and claimant requested a formal hearing, Director's Exhibit 19. After holding a hearing, Director's Exhibit 32, Administrative Law Judge Joel R. Williams issued a Decision and Order Denying Benefits on December 31, 1986, Director's Exhibit 33. Judge Williams found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), but determined that the evidence did not establish that claimant was totally disabled pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Director's Exhibit 33.

On claimant's appeal, the Board affirmed the administrative law judge's finding that the evidence was insufficient to establish that he was totally disabled pursuant to Section 718.204(c). *Crawford v. Shamrock Coal Co.*, BRB No. 87-0351 BLA (Aug. 30, 1988)(unpub.); Director's Exhibit 47. Claimant appealed the Board's Decision and Order to the United States Court of Appeals for the Sixth Circuit. In a decision issued on August 7, 1989, the Sixth Circuit affirmed the administrative law judge's weighing of the evidence and the denial of benefits. *Crawford v. Shamrock Coal Co., Inc.*, No. 88-3883 (6th Cir. Aug. 7, 1989)(unpub.); Director's Exhibit 51.

On August 23, 1989, claimant filed another application for benefits, Director's Exhibit 52, which the claims examiner informed claimant constituted a petition for modification, Director's Exhibit 54A. The claims examiner denied benefits, Director's Exhibits 57, 60, and the case was transferred to the Office of Administrative Law Judges on January 4, 1991, Director's Exhibit 61.

After holding a hearing, Administrative Law Judge Donald W. Mosser (the administrative law judge) issued a Decision and Order Awarding Benefits on January 22, 1993. The administrative law judge noted that the case involved a petition for modification. Finding the newly submitted evidence sufficient to establish total disability due to pneumoconiosis under 20 C.F.R. §718.204(c), (b), the administrative law judge found that claimant established a change in conditions under 20 C.F.R. §725.310. The administrative law judge also found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and that claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge further found that claimant was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), (b). Consequently, the administrative law judge awarded benefits.

On employer's appeal, the Board, in a Decision and Order issued on September 29, 1994, affirmed the administrative law judge's finding that the existence of pneumoconiosis is established pursuant to Section 718.202(a)(4). The Board, however, vacated the administrative law judge's findings pursuant to Section 718.204 and remanded the case for consideration of all relevant evidence regarding total disability, causation and the date for the commencement of benefits. *Crawford v. Shamrock Coal Co., Inc.*, BRB No. 93-1028 BLA (Sept. 29, 1994)(unpub.).

In a Decision and Order on Remand issued on May 12, 1995, the administrative law judge considered all of the evidence of record. He found the evidence sufficient to establish total disability pursuant to Section 718.204(c), and that claimant's disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, he awarded benefits.

On employer's appeal, the Board affirmed the administrative law judge's findings pursuant to Section 718.204(c)(1)-(3), but held that the administrative law judge erred in finding total disability demonstrated pursuant to Section 718.204(c)(4). The Board also held that the administrative law judge failed to provide an adequate rationale for his Section 718.204(b) finding. Accordingly, the Board vacated the administrative law judge's findings pursuant to Section 718.204(c)(4) and 718.204(b), and remanded the case for further consideration. *Crawford v. Shamrock Coal Co., Inc.*, BRB No. 95-1562 BLA (Oct. 24, 1996)(unpub.).

In a Decision and Order on Remand - Denying Benefits issued on August 19, 1997, the administrative law judge reaffirmed his findings that the evidence does not demonstrate total disability pursuant to Section 718.204(c)(1)-(3). He also found the evidence insufficient to demonstrate total disability pursuant to Section 718.204(c)(4). Accordingly, he found that claimant failed to establish total disability pursuant to Section 718.204(c), and denied benefits.

In this appeal, claimant generally asserts that the administrative law judge erred in denying benefits. Claimant contends that the administrative law judge's previous finding that claimant established total disability due to pneumoconiosis was correct. The only specific argument in claimant's brief is that:

on Remand, the Administrative Law Judge reviewed all the same evidence and concluded just the opposite, a decision which is not supported by the medical and other evidence of record. Accordingly, the Administrative Law Judge erred in making such a finding and same should be overturned and

a new award of benefits issued in the instant case.

Claimant's Brief at 10 (unpaginated). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a brief on 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 addition to reciting the history of the instant case, claimant asserts that the administrative law judge's denial of benefits is not supported by the evidence of record and urges that the administrative law judge's prior award of benefits was correct. However, claimant has not provided any argument supporting his position or argued this issue with any specificity. Consequently, since claimant has not provided a basis for the Board to review the administrative law judge's 1997 Decision and Order, we affirm the administrative law judge's 1997 Decision and Order denying benefits. See *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).

Accordingly, the administrative law judge's Decision and Order on Remand - Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge