

BRB No. 07-0249 BLA

C. B.)
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 Claimant-Petitioner)
)
 v.)
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 LEECO, INCORPORATED)
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 and)
)
 ACORDIA EMPLOYERS SERVICE) DATE ISSUED: 11/29/2007
)
 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 Denying Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Leroy Lewis (Law Office of Phillip Lewis), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (05-BLA-5345) of Administrative Law Judge Ralph A. Romano 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).¹ The parties stipulated and the administrative law judge found that claimant had eighteen years of coal mine employment.² Decision and Order at 2. Based on the date of filing, the claim was adjudicated pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203. The administrative law judge further found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i),(iv), but did not establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203, and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response in this appeal.³

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising

¹ Claimant filed his claim for benefits on November 15, 2001. Director's Exhibit 2. The district director denied the claim on May 14, 2003, and claimant requested a hearing. Director's Exhibit 29. On June 8, 2004, Administrative Law Judge Joseph E. Kane remanded the case to the district director because a complete pulmonary evaluation had not been provided. Director's Exhibit 36. On remand, Dr. Baker submitted a supplemental report, and the case was returned to the Office of Administrative Law Judges on December 15, 2004. Director's Exhibits 35, 39.

² The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

³ We affirm as unchallenged on appeal the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Pursuant to Section 718.202(a)(4), the administrative law judge thoroughly discussed the conflicting medical opinion evidence and found that the opinions of Drs. Baker and Krasnopolsky, diagnosing claimant with pneumoconiosis, were outweighed by the better reasoned and documented opinions from Drs. Repsher and Rosenberg, concluding that claimant does not have pneumoconiosis. Decision and Order at 7-10.

Claimant's brief does not provide an adequate basis for review of the administrative law judge's finding that the medical opinions do not establish the existence of pneumoconiosis. Because the Board is not empowered to engage in a *de novo* proceeding or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301. In this case, claimant's statement that Dr. Baker's opinion establishes the existence of pneumoconiosis neither raises any substantive issue nor identifies any specific error on the part of the administrative law judge in determining that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Consequently, we affirm the administrative law judge's finding.

In light of our affirmance of the administrative law judge's finding that the evidence did not establish the existence of pneumoconiosis, a necessary element of entitlement under Part 718, we need not address the administrative law judge's findings pursuant to 20 C.F.R. §§718.203, 718.204(c). *See Anderson*, 12 BLR at 1-112; *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge