

BRB No. 05-0938

MINH Q. VO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ARCHER DANIELS MIDLAND)	DATE ISSUED: 07/28/2006
COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

Anh Quang Cao, Gretna, Louisiana, for claimant.

Alan G. Brackett (Mouledoux, Bland, Legrand & Bland, L.L.C), New Orleans, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2004-LHC-2411) of Administrative Law Judge Clement J. Kennington rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On March 26, 2003, claimant was involved in an accident while in the course of his employment as a fitter/welder for employer in which he sustained lacerations and contusions to his right forearm and wrist. Claimant filed a claim for benefits under the Act on July 28, 2003 for symptoms relating to his neck, and right arm, elbow and wrist, which he asserted were causally related to his March 26, 2003, work-related accident.

Employer paid various medical expenses related to the lacerations and contusions of claimant's right arm and wrist, but disputed claimant's contention that his cervical radiculopathy is related to his employment with employer.

In his Decision and Order, the administrative law judge found that claimant failed to establish that a work-related accident occurred which could have caused his present cervical condition. The administrative law judge therefore concluded that as claimant did not establish his *prima facie* case, he is not entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), that his present condition is work-related. The administrative law judge alternatively found that, assuming the Section 20(a) presumption was invoked, employer produced substantial evidence sufficient to rebut the presumption. Thereafter, the administrative law judge addressed the record as a whole and concluded that claimant did not establish that his cervical condition is causally related to his employment with employer. The administrative law judge further found that claimant failed to establish that he could not perform his usual duties as a welder/fitter for employer and, thus, did not establish a *prima facie* case of total disability under the Act. Lastly, the administrative law judge found that claimant was not entitled to medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, other than those medical expenses for his arm and wrist injuries previously paid by employer.

Claimant appeals the administrative law judge's denial of benefits. In support of his appeal, claimant has filed with the Board a Petition for Review and Incorporated Memorandum which is virtually identical to Claimant's Brief in Support of his Claim for Compensation which he filed with the administrative law judge following the hearing in this claim. Employer responds, asserting that the administrative law judge's Decision and Order should be affirmed; employer avers in this regard that claimant's Petition for Review does not identify any error of fact or law made by the administrative law judge but merely reargues the case presented to the administrative law judge.

The Benefits Review Board is authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees arising under the Longshore Act. *See* 33 U.S.C. §921(b)(3). The findings of fact in the administrative law judge's decision "shall be conclusive if supported by substantial evidence in the record as a whole." *Id.* The circumscribed scope of the Board's review authority necessarily requires a party challenging the decision below to address that decision and demonstrate why substantial evidence does not support the result reached.

The Board's Rules of Practice and Procedure further provide that a party's petition for review to the Board shall list "the *specific* issues to be considered on appeal" and that "[e]ach petition for review shall be accompanied by a . . . statement which: *Specifically* states the issues to be considered by the Board." *See* 20 C.F.R. §802.211(a), (b)

(emphasis added). Where a party is represented by counsel, mere assignment of error is not sufficient to invoke Board review. *See Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990); *Carnegie v. C&P Telephone Co.*, 19 BRBS 57 (1986).

In the instant case, claimant has failed to meet these threshold requirements. Specifically, claimant's Petition for Review and Incorporated Memorandum, which is virtually identical to the brief which he submitted to the administrative law judge post-hearing, fails to either address the administrative law judge's decision or identify a specific error committed by the administrative law judge below. Consequently, claimant has not demonstrated why substantial evidence does not support the administrative law judge's decision. Merely filing a copy of a post-hearing brief as a petition for review and brief, without more, is insufficient to satisfy the requirements of the Act and its regulations. As claimant has failed to raise a substantial issue for the Board to review, the decision below must be affirmed.¹ *See Collins*, 23 BRBS 227; *Carnegie*, 19 BRBS 57.

¹ Furthermore, claimant's argument that all doubts must be construed in his favor is without merit. *See Director, OWCP v. Greenwich Collieries*, 521 U.S. 267, 28 BRBS 43(CRT) (1994).

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

JUDITH S. BOGGS
Administrative Appeals Judge