

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0266 BLA

TOMMY J. MAY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
EASTERN COAL CORPORATION)	
)	
and)	
)	
THE PITTSTON COMPANY)	DATE ISSUED: 02/17/2021
)	
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 John P. Sellers, III,
Administrative Law Judge, United States Department of Labor.

Stephanie Coleman, Pikeville, Kentucky, for Claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for
Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and
JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge John P. Sellers, III's Decision and Order Denying Benefits (2019-BLA-05435) rendered on a claim filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on December 9, 2016.¹ 20 C.F.R. §725.309(c).

The administrative law judge found Claimant has 16.65 years of qualifying coal mine employment, and established a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2). He therefore found Claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309 and invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).² The administrative law judge further found Employer rebutted the presumption with respect to the existence of clinical pneumoconiosis and disability due to legal pneumoconiosis. Accordingly, he denied benefits.

On appeal, Claimant summarily contends he “should be found totally disabled due to coal workers’ pneumoconiosis.” Cl. Br. at 3. Employer responds in support of the denial of benefits. The Director, Office of Workers’ Compensation Programs (the Director), did not file a response.³

¹ A November 20, 2018 memorandum from the district director’s office states Claimant previously filed a claim for benefits, which was denied on October 27, 1980, but the claim file was destroyed because of its age. Director’s Exhibit 1. For purposes of analyzing Claimant’s subsequent claim, therefore, the administrative law judge assumed Claimant failed to establish any element of entitlement in this prior claim. Decision and Order at 7. Claimant took no further action until filing the present claim on December 9, 2016. Director’s Exhibits 1, 3.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305. An employer may rebut this presumption by establishing that the claimant has neither legal nor clinical pneumoconiosis, or that “no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201.” 20 C.F.R. §718.305(d)(1)(i), (ii).

³ We affirm, as unchallenged on appeal, the administrative law judge’s findings that Claimant established 16.65 years of qualifying coal mine employment, total disability at 20 C.F.R. §718.204(b)(2), and invocation of the Section 411(c)(4) presumption. *See*

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁴ 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). The Board's limited scope of review requires a party challenging the Decision and Order below to address that decision and demonstrate why substantial evidence does not support the result reached or why it is contrary to law. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Director, OWCP*, 791 F.2d 445 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Unless the appealing party identifies errors in the administrative law judge's decision 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*, 10 BLR at 1-120; *Fish*, 6 BLR at 1-109.

Although Claimant summarizes evidence favorable to his case and contends he is totally disabled due to pneumoconiosis, he does not address the administrative law judge's decision or present any argument demonstrating error on the part of the administrative law judge in support of his contention. Indeed, Claimant's brief to the Board is identical to the post-hearing brief he filed with the administrative law judge; it makes no reference to the administrative law judge's decision or findings. Because Claimant's unsupported assertion of entitlement does not provide a basis for the Board's review, we decline to address it. 20 C.F.R. §§802.211(b), 802.301(a); *see Cox*, 791 F.2d at 446; *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109. We thus affirm the administrative law judge's finding that Employer rebutted the Section 411(c)(4) presumption of total disability due to pneumoconiosis and, consequently, affirm the denial of benefits. 20 C.F.R. §718.305(d); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Skrack v. Island Creek Coal Co., 6 BLR 1-710, 1-711 (1983); Decision and Order at 7, 13-14.

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as Claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Tr. at 27.

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge