

BRB No. 98-1008 BLA

ROGER KELLY)	
)	
Claimant-Petitioner))
)	
v.)	
)	
LIMOUSINE COAL, INCORPORATED)	
)	
and)	DATE ISSUED:
)	
EMPLOYERS INSURANCE OF WAUSAU)	
)	
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 on Remand of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Otis Doan, Jr., Harlan, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (95-BLA-0959) of Administrative Law Judge Rudolf L. Jansen 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 is before the Board for the second time. In the original Decision and Order, the administrative law judge credited claimant with twelve years of coal mine employment and adjudicated

this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b). Further, although the administrative law judge found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(3), he found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). Additionally, the administrative law judge found the evidence sufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge awarded benefits. In response to employer's appeal, the Board affirmed the administrative law judge's length of coal mine employment finding and his findings at 20 C.F.R. §§718.202(a)(4), 718.203(b) and 718.204(c)(1) and (c)(2). However, the Board vacated the administrative law judge's findings at 20 C.F.R. §§718.204(c)(4) and 718.204(b), and remanded the case for further consideration of the evidence. *Kelly v. Limousine Coal, Inc.*, BRB No. 96-1783 BLA (July 31, 1997)(unpub.).

On remand, the administrative law judge found the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in finding the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order on Remand.¹ The Director, Office of Workers' Compensation Programs, has declined to participate in this 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).

¹Employer also preserves its contention that the administrative law judge erred in finding the evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Claimant generally contends that the administrative law judge erred in finding the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). However, claimant does not delineate how the administrative law judge erred in his analysis of the evidence at 20 C.F.R. §718.204(c)(4). Claimant merely notes the presence of medical opinions that support a finding of total disability. Thus, claimant has failed to allege any specific error in the administrative law judge's findings or legal conclusions, and as such, claimant fails to provide a basis upon which the Board may review the administrative law judge's findings.² 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); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Therefore, we affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.204(c)(4).³

Since claimant failed to establish total disability at 20 C.F.R. §718.204(c), an essential element of entitlement, we hold that the administrative law judge properly denied benefits under 20 C.F.R. Part 718. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

²We hold that the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(4) is furthermore supported by substantial evidence.

³As previously noted, the Board affirmed the administrative law judge's finding of no total disability at 20 C.F.R. §718.204(c)(1) and (c)(2). *Kelly v. Limousine Coal, Inc.*, BRB No. 96-1783 BLA, slip op. at 2 n.2 (July 31, 1997)(unpub.). We hold as a matter of law that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(3) since the record does not contain any evidence of cor pulmonale with right sided congestive heart failure.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge