

BRB No. 00-1153 BLA

GARY D. FIELDS)
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 Claimant-Petitioner)
)
 v.)
)
 TOPPER COAL COMPANY) DATE ISSUED:
)
 and)
)
 LIBERTY MUTUAL INSURANCE GROUP)
)
 Employer/Carrier-)
 Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

W. Barry Lewis (Lewis & Lewis Law Offices) Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (99 -BLA-0832) of Administrative Law Judge Daniel J. Roketenetz 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).¹ Based on the filing date of August 10, 1998, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited claimant with twenty-two years of coal mine employment and found employer to be

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

the responsible operator. On the merits, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis or total disability. Accordingly, benefits were denied.

On appeal, claimant contends that the opinion of Dr. Sundaram, claimant's treating physician, establishes the existence of pneumoconiosis and total disability. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Board cannot undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of power between the administrative law judge as the trier-of-fact, and the Board as a review tribunal. *See* 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). As we have emphasized previously, the Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. *See* 20 C.F.R. §802.211(b); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Sarf, supra*; *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Unless the party identifies errors 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, supra; Fish, supra.*

In the instant case, other than generally asserting that the opinion of Dr. Sundaram is sufficient to establish the existence of pneumoconiosis and total disability, claimant has not challenged the rationale provided by the administrative law judge for finding the evidence of record insufficient to establish the existence of pneumoconiosis and total disability. Claimant has failed, therefore, to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law, and the Board has no basis upon which to review the decision of the administrative law judge. *Cox, supra; Sarf, supra; Slinker, supra; Fish, supra.* Moreover, the administrative law judge is not required to accord greater weight to the opinion of a treating physician. *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). Consequently, we affirm the finding of the administrative law judge that the evidence of record was insufficient to demonstrate the existence of pneumoconiosis or total disability.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge