

BRB No. 05-0460 BLA-A

BOBBY G. CRUM)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BIG HILL MINING, INCORPORATED)	DATE ISSUED: 12/29/2005
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
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 Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Randy G. Clark (Clark & Johnson Law Offices), Pikeville, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer/carrier.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (04-BLA-5171) of Administrative Law Judge Paul H. Teitler on a subsequent claim¹ 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). The administrative law judge initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for twenty-three years. Adjudicating this subsequent claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Therefore, the administrative law judge concluded that claimant failed to establish that one of the applicable conditions of entitlement had changed since the date upon which the order denying the prior claim became final under 20 C.F.R. §725.309(d). Accordingly, benefits were denied.

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 the 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'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On appeal, claimant challenges the administrative law judge's finding that claimant failed to establish total disability due to pneumoconiosis. Claimant states that the medical opinions of Drs. Hussain and Baker, physicians who diagnosed pneumoconiosis and a totally disabling respiratory impairment, set forth the clinical findings, observations, and other data on which they based their conclusions and that the opinions of Drs. Dahhan, Broudy, and Fino that claimant's breathing impairment was attributable to asthma do not preclude a finding that pneumoconiosis was a substantially contributing factor to his total respiratory disability. Claimant has failed, however, to provide an argument framed in terms of the administrative law judge's decision below, which is a threshold requirement for the Board's review of the case. Employer responds to claimant's appeal, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), as party-in-interest, has filed a letter indicating that he will not to participate in this appeal.²

¹ Claimant filed his first application for benefits on September 30, 1997, which was finally denied by Administrative Law Judge Daniel J. Roketenetz in a Decision and Order dated April 28, 2000. Director's Exhibit 1. Although claimant filed an appeal with the Benefits Review Board, claimant subsequently requested that his appeal be withdrawn. Accordingly, the Board granted claimant's request and dismissed his appeal on June 29, 2000. Claimant filed a second application for benefits on August 17, 2001, which is the subject of the case *sub judice*. Director's Exhibit 2.

² Initially, the Director, Office of Workers' Compensation Programs (the

In assessing the probative value of the medical opinion evidence pursuant to Section 718.204(c), the administrative law judge found the opinions of Drs. Broudy, Dahhan, and Fino, who opined that claimant's pulmonary changes may not be disabling with proper bronchodilator therapy and were attributable to asthma and not coal workers' pneumoconiosis, were more persuasive than the report of Dr. Baker because the aforementioned physicians provided detailed discussions explaining the results of claimant's pulmonary testing and why these studies demonstrated the presence of asthma and not a pulmonary condition caused by coal dust inhalation. Decision and Order at 8. Relying on these more persuasive opinions, therefore, the administrative law judge concluded claimant failed to establish that total disability due to pneumoconiosis pursuant to Section 718.204(c).

In his Petition for Review and Brief supporting his appeal in this case, claimant fails to delineate how the administrative law judge erred in his analysis of the medical evidence relevant to Section 718.202(a) or Section 718.204, to specify an allegation of legal or factual error with respect to the administrative law judge's credibility determinations and his weighing of the medical evidence, and to brief his allegations in terms of relevant law on the issue. *See* Petition for Review and Brief at pp. 3-4 [unpaginated].

It is well established that a party challenging the administrative law judge's decision must demonstrate with some degree of specificity the manner in which substantial evidence precludes the denial of benefits or why the administrative law judge's decision is contrary to law. 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-49 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Because claimant fails to state with specificity why the administrative law judge's conclusions are contrary to law and has not otherwise raised any allegations of error under either Section 718.202(a) or 718.204, he fails to provide a basis upon which the Board can review the administrative law judge's findings. Inasmuch as claimant offers no specific legal or factual challenge to the administrative law judge's rationale, we affirm the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) or total disability due to pneumoconiosis pursuant to Section 718.204(c). *See Tennessee Consolidation Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001); *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). Consequently, we affirm the administrative law judge's determination that

Director), filed an appeal of the administrative law judge's Decision and Order. Subsequently, however, the Director filed a Motion to Withdraw his appeal with the Board. The Board granted the Director's request and dismissed his appeal, BRB No. 05-0460 BLA, by Order issued on April 15, 2005.

claimant is not entitled to benefits in this case.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge