

BRB No. 00-0550 BLA

SILAS CAMPBELL)		
)		
Claimant-Petitioner)		
)		
v.)		
)		
DIRECTOR, OFFICE OF WORKERS')	DATE	ISSUED:
)		
COMPENSATION PROGRAMS, UNITED)		
STATES DEPARTMENT OF LABOR)		
)		
Respondent)	DECISION and ORDER	

Appeal of the Decision and Order - Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Steven K. Robison (Montgomery, Elsner & Pardieck), Seymour, Indiana, for claimant.

Barry H. Joyner (Judith E. Kramer, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (99-BLA-0908) of Administrative Law Judge Joseph E. Kane 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 In this request for modification of a denial of a duplicate claim, the

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.

administrative law judge credited claimant with twelve years of coal mine employment, and found the evidence insufficient to establish the existence of pneumoconiosis or a totally disabling respiratory impairment, and thus, insufficient to demonstrate a basis for modification. Accordingly, benefits were denied.

On appeal, claimant contends that the evidence establishes the existence of pneumoconiosis and that he was totally disabled due to pneumoconiosis arising out of coal mine employment. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's Decision and Order as supported by substantial evidence.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant first challenges the administrative law judge's finding at Section 718.202(a)(4), asserting that the administrative law judge failed to consider whether Dr. Snow's medical report is sufficient to establish the existence of pneumoconiosis as defined at 20 C.F.R. § 718.201.² Dr. Snow diagnosed a "definite pulmonary disease that is related to his (claimant's) work in the coal mines." Director's Exhibit 15. Dr. Snow also stated that regarding claimant's current pulmonary status, "he [claimant] is totally and permanently disabled...." Director's Exhibit 15.

² Claimant concedes that the existence of pneumoconiosis cannot be established by x-ray or biopsy evidence and that the presumptions at Section 718.304, 718.305 and 718.306 are not applicable. Claimant's Brief at 7; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In considering the medical opinion evidence, the administrative law judge accorded little weight to Dr. Snow's report, however, because it "failed to specifically identify the medical data upon which he based his opinion." Decision and Order at 10. In a one page letter, Dr. Snow refers to the fact that claimant worked in the coal mines "for many years," that he has generally reviewed claimant's medical records, and that claimant's "physical examination does not reveal any signs of heart disease or other problems besides the pulmonary disease to account for his shortness of breath." Director's Exhibit 15. The administrative law judge is correct, however, in finding that Dr. Snow "failed to specifically identify the medical data upon which he based his opinion," Decision and Order at 10, or discuss how his findings supported his conclusions. We cannot, therefore, say that the administrative law judge acted irrationally in finding that Dr. Snow's opinion was entitled to little weight. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *see also Director, OWCP v. Rowe*, 719 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Moreover, as claimant raises no arguments regarding the administrative law judge's weighing of the other physicians opinions, we will affirm his finding that claimant failed to establish the existence of pneumoconiosis and a basis for modification. 20 C.F.R. §§718.202(a)(4), 725.310. Likewise as claimant has failed to raise any specific allegation of error with respect to the administrative law judge's finding on total disability, we will not address that finding. *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).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge