

BRB No. 03-0479 BLA

WOODROW K. ADAIR)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	DATE ISSUED: 02/10/2004
)	
)	
Employer-Respondent)	
)	
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 Alice M. Craft,
Administrative Law Judge, United States Department of Labor.

Kendrick King, Welch, West Virginia, for claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for
employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2001-BLA-1078) of
Administrative Law Judge Alice M. Craft rendered on a duplicate 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 The administrative law judge found twenty-four years and four months of coal mine employment established and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on the date of filing.² Decision and Order at 6. In considering this duplicate claim, the administrative law judge concluded that the newly submitted evidence established total disability, an element of entitlement previously adjudicated against claimant, and thus, found that a material change in conditions was established. The administrative law judge found, on considering all the evidence of record, however, that the existence of pneumoconiosis and total disability due to pneumoconiosis were not established. Accordingly, benefits were denied. 20 C.F.R. §725.309; *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

On appeal, claimant contends that the administrative law judge erred in finding the evidence of record was insufficient to establish the existence of pneumoconiosis and disability causation. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, is not participating 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In the instant case, claimant merely recites evidence favorable to his claim, and fails to assign any specific allegations of legal or factual error to the administrative law judge's analysis of the evidence relevant to the existence of pneumoconiosis. Failure to do so precludes review and requires the Board to affirm the decision below. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g sub nom. Cox v. Director, OWCP*, 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Thus, we do not address claimant's general contention that the evidence of record is sufficient to establish the existence of pneumoconiosis. *Cox*, 791 F.2d 445, 9 BLR 2-46,

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 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² Claimant's first claim for benefits filed on October 18, 1979, was denied on August 15, 1980, as claimant failed to establish any element of entitlement. Director's Exhibit 25-1, 25-11. Claimant filed the instant, duplicate claim on May 31, 2000.

aff'g sub nom., 7 BLR 1-610; *Sarf*, 10 BLR 1-119. We, therefore, affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis. Likewise, we need not address claimant's general contention that the evidence of record is sufficient to establish disability causation as it is insufficiently briefed, *Cox*, 791 F.2d 445, 9 BLR 2-46, *aff'g sub nom.*, 7 BLR 1-610; *Sarf*, 10 BLR 1-119.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge