

BRB No. 05-0667 BLA

MARCUS POTTER)
)
 Claimant-Petitioner)
)
 v.)
)
 DOMINION COAL CORPORATION) DATE ISSUED: 02/28/2006
)
 and)
)
 SUN COAL CORPORATION)
)
 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 of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and W. Andrew Delph, Jr. (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-6017) of Administrative Law Judge Jeffrey Tureck denying benefits on a subsequent 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). The administrative law judge credited

claimant with twenty-four years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718.¹ The administrative law judge found the newly submitted evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Consequently, the administrative law judge found the evidence insufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.²

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

Claimant generally contends that the administrative law judge erred in finding the newly submitted medical opinion evidence insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). However, claimant does not delineate how the administrative law judge erred in his analysis. Claimant merely points to evidence that is favorable to his claim and asserts that the administrative law judge erred in finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). 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. *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 that the newly

¹Claimant filed his first claim on March 23, 1999. Director's Exhibit 1. This claim was denied by the Department of Labor on May 11, 1999 because the evidence did not show that claimant was totally disabled. *Id.* Because claimant did not pursue this claim any further, the denial became final. Claimant filed his most recent claim on March 27, 2003. Director's Exhibit 3.

²Since the administrative law judge's length of coal mine employment finding and his findings that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

submitted medical opinion evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv).³

Since the administrative law judge properly found the newly submitted evidence insufficient to establish total disability at 20 C.F.R. §718.204(b), we affirm the administrative law judge's finding that the evidence is insufficient to establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309.

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

BETTY JEAN HALL
Administrative Appeals Judge

³Furthermore, the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv) is supported by substantial evidence.