

BRB No. 97-1080 BLA

LLOYD D. BROCK )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 KING COAL COMPANY ) DATE ISSUED:  
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 and )  
 )  
 HARTFORD ACCIDENT & INDEMNITY )  
 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 of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Edmond C. Collett, Hyden, Kentucky, for claimant.

David L. Murphy (Clark, Ward & Cave), Louisville, Kentucky, for employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-774) of Administrative Law Judge Robert L. Hillyard 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).<sup>1</sup> After crediting the miner with six years and nine months of coal mine

<sup>1</sup> Claimant initially filed for benefits on September 22, 1987. Director's Exhibit 27-374. This claim was withdrawn on January 24, 1991. Director's Exhibit 27-45. Claimant filed the instant claim on April 7, 1994. Director's Exhibit 1.

employment, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis or total disability pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in his length of coal mine employment determination and generally asserts that the administrative law judge erred in failing to find the existence of pneumoconiosis and total disability. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has indicated that he will not participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational and is 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*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 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 of these elements by a preponderance of the evidence precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

Claimant makes a general contention that he has established that he suffers from pneumoconiosis and is totally disabled but cites to no specific error made by the administrative law judge in this regard. Claimant's Brief at 6-13. The Board is not authorized to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of authority between the administrative law judge as the trier-of-fact, and the Board as a reviewing 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 with specificity 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'd* 7 BLR 1-610 (1984); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *Sarf, supra*. 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 medical evidence is sufficient to establish entitlement, see Claimant's Brief at 6-13, claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law pursuant to 20 C.F.R. §§718.202(a) or 718.204(c). Thus, the Board has no basis upon which to review the decision.<sup>2</sup> Inasmuch as the administrative law judge

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<sup>2</sup> The administrative law judge permissibly accorded greater weight to the preponderance of better qualified physicians in finding that the x-ray evidence was

properly considered the medical evidence of record and determined that it failed to prove essential elements of entitlement, we affirm the administrative law judge's denial of benefits.<sup>3</sup> See *Trent, supra*; *Perry, supra*.

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insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990). Additionally, the existence of pneumoconiosis can not be established pursuant to 20 C.F.R. §718.202(a)(2), (3) as there is no biopsy or evidence of complicated pneumoconiosis in the record in this living miner's claim filed after January 1, 1982. *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986). Finally, the administrative law judge rationally accorded greater weight to the preponderance of the better reasoned and documented opinions in concluding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). We further note that the administrative law judge correctly found that the evidence failed to establish total disability because none of the objective tests are qualifying, there is no evidence of cor pulmonale and because no physician opined that claimant was totally disabled due to a respiratory or pulmonary impairment. Director's Exhibits 5-8, 10, 27-11, 27-54, 27-102, 27-109, 27-112, 27-128, 27-130, 27-136, 27-139, 27-238, 27-242, 27-243, 27-250, 27-254, 27-331, 27-332, 27-338; Employer's Exhibits 4, 5, 7, 8, 11, 14, 17, 18, 21.

<sup>3</sup> Since we affirm the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis and total disability, we need not address claimant's contention that the administrative law judge erred in his length of coal mine employment determination.



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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge