

BRB No. 98-0663 BLA

CLINARD SKEENS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
KICKAPOO COAL COMPANY)	DATE ISSUED:
)	
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 of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (97-BLA-1056) of Administrative Law Judge Edward Terhune Miller 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). The administrative law judge credited claimant with more than ten years of coal mine employment and found the evidence insufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a). The administrative law judge further found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a).¹ Accordingly, benefits were denied. On appeal, claimant generally

¹ The administrative law judge correctly noted that this claim was filed on August 6, 1974, Director's Exhibit 1, and thus should be adjudicated initially pursuant to 20 C.F.R. Part 727.

contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not respond to this appeal.

The Board's scope of review is defined by statute. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a). 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 on the Board and may not be disturbed. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Board is not empowered to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of power between the administrative law judge as the trier-of-fact, and the Board as the review 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 and address why substantial evidence does not support the result reached or why 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*.

He also correctly noted that inasmuch as this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, if claimant cannot establish entitlement under Part 727, his claim is subject to further review under 20 C.F.R. Part 718. *See Knuckles v. Director, OWCP*, 869 F.2d 996, 12 BLR 2-217 (6th Cir. 1989).

In the instant case, other than generally asserting that the medical evidence of record was sufficient to establish entitlement to benefits, *see* Claimant's Brief at 2-4, claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law pursuant to Part 718. Thus, as claimant's counsel has failed to adequately raise or brief any issue arising from the administrative law judge's Decision and Order denying benefits, the Board has no basis upon which to review the decision.²

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

² The administrative law judge fully examined the x-ray evidence and correctly concluded that the evidence is preponderantly negative for pneumoconiosis in light of the physician's qualifications. Thus, he correctly held that the interim presumption could not be invoked pursuant 20 C.F.R. §727.203(a)(1), and that the x-ray evidence fails to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Decision and Order at 6. He also properly assessed the pulmonary function study, blood gas study and medical report evidence and concluded that the interim presumption could not be invoked pursuant to Section 727.203(a)(2), (3) and (4). The administrative law judge further correctly concluded that the evidence failed to meet the standards for establishing the presence of pneumoconiosis under Section 718.202(a)(2), (3), and (4). Decision and Order at 6. Under Part 718, failure to establish this essential element of entitlement precludes an award of benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

REGINA C. McGRANERY
Administrative Appeals Judge