

BRB No. 00-0513 BLA

JOHN W. COMBS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
SOLID FUEL COMPANY)	DATE ISSUED:
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-interest)	DECISION and ORDER

Appeal of the Decision and Order - Award of Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

John W. Combs, Jewell Ridge, Virginia, *pro se*.

Steven H. Theisen (Midkiff & Hiner, P.C.), Richmond, Virginia, for employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order - Award of Benefits (98-BLA-1274) of Administrative Law Judge Edward Terhune Miller awarding 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 sixteen years of coal mine employment and found employer to be the responsible operator. Based on the filing date of November 7, 1997, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a), 718.203(b) and a totally disabling respiratory impairment due to pneumoconiosis at 20 C.F.R. §718.204(c), (b). The

administrative law judge also found the evidence of record sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 based on the existence of complicated pneumoconiosis. Accordingly, benefits were awarded.

On appeal, employer challenges the findings of the administrative law judge on the existence of complicated pneumoconiosis at Section 718.304 and the presence of a totally disabling respiratory impairment due to pneumoconiosis at Sections 718.204(c), (b). Claimant 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 participate 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 by 30 U.S.C. §932(a); *O'Keeffe 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*).

At Section 718.204(c) and (b), employer has not challenged the rationale provided by the administrative law judge for finding the evidence of record sufficient to establish the presence of a totally disabling respiratory impairment due to pneumoconiosis. Other than asserting that the medical reports of Drs. Hippensteel and Fino establish that claimant's respiratory impairment is not totally disabling, Employer's Brief at 10-11, employer has failed to identify any errors made by the administrative law judge in the evaluation of the

¹ We affirm the findings of the administrative law judge on the length of coal mine employment, on the designation of employer as the responsible operator, on the presence of simple pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a) and 718.203(b), and on the date of onset, as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

² Since the miner's last coal mine employment took place in Virginia, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

evidence and applicable law. Thus, the Board has no basis upon which to review this part of the decision of the administrative law judge. The Board is not required to undertake a *de novo* adjudication of the evidence on this issue. 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 a 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 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'g* 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*. Consequently we affirm the finding of the administrative law judge that the evidence of record was sufficient to demonstrate the presence of a totally disabling respiratory impairment due to pneumoconiosis at Sections 718.204(c) and (b). We, therefore, affirm the award of benefits as it is supported by substantial evidence and is in accordance with law.

³ As we affirm the findings of the administrative law judge at 20 C.F.R. §§718.202(a), 718.203(b), and 718.204(c), (b), and the award of benefits, we need not address employer's arguments at 20 C.F.R. §718.304.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge