

BRB Nos. 04-0457 BLA  
and 04-0457 BLA-A

WILLIAM M. ZIOTS	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 01/31/2005
	)	
Employer-Respondent	)	
Cross-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Fletcher E. Campbell, Jr., Administrative Law Judge, United States Department of Labor.

Daniel L. Chunko (Chunko Law Office), Pineville, Virginia, for claimant.

Dorothea J. Clark and William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-5570) of Administrative Law Judge Fletcher E. Campbell, Jr. denying benefits on a subsequent claim<sup>1</sup> filed pursuant to the

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<sup>1</sup> Claimant, William M. Ziots, filed his first application for benefits on January 18, 1993, which the district director denied on November 16, 1994. Director's Exhibit 1. On August 3, 1995, claimant's counsel on behalf of claimant requested that this claim be withdrawn. Director's Exhibit 1. Claimant filed a subsequent application for benefits on

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). Employer has filed a cross-appeal in the instant case. The administrative law judge initially credited the parties' stipulation that claimant worked in qualifying coal mine employment for forty-one and one-half years. Adjudicating this subsequent claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that because claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), he demonstrated that one of the applicable conditions of entitlement had changed since the date upon which the order denying the prior claim became final under 20 C.F.R. §725.309(d). However, the administrative law judge found that, after reviewing all the evidence of record, claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred: in finding that claimant's coal-dust related condition was in the form of chronic bronchitis; in finding that he failed to meet his burden of establishing that his pneumoconiosis arose out of coal mine employment; and in not giving deference to the opinions of claimant's physicians. Employer responds to claimant's appeal, urging affirmance of the denial of benefits. Employer has also filed a cross-appeal arguing that, while the ultimate decision denying benefits in this case is rational and supported by substantial evidence, the administrative law judge erred in finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a) and a material change in conditions pursuant to Section 735.309. Employer also contends that the administrative law judge erred in finding that a diagnosis of chronic bronchitis, standing alone, was sufficient to establish the existence of statutory pneumoconiosis as defined by the Act, *see* 20 C.F.R. §718.201, and erred in failing to render a complete weighing all the evidence relevant to the existence of pneumoconiosis, *i.e.*, to weigh the x-ray readings in conjunction with the medical opinion evidence together pursuant to *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997); *accord Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating his intention not to participate in either appeal. Claimant did not file a response brief to employer's cross-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,

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October 27, 1999, which was denied by the district director on January 4, 2000 because claimant failed to establish the existence of pneumoconiosis arising out of coal mine employment and total disability due to pneumoconiosis. Director's Exhibit 2. Claimant took no further action on this claim. On March 22, 2002, claimant filed a third claim for benefits, which is the subject of the case *sub judice*. Director's Exhibit 4.

and are consistent with the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Having found that claimant established a material change in conditions by establishing the existence of pneumoconiosis, the administrative law judge considered whether total disability was established. Decision and Order at 6. After reviewing all the evidence relevant to the issue of total respiratory disability, he found that the evidence of record was insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2)(i)-(iv). Hence, claimant’s failure to demonstrate total respiratory disability pursuant to Section 718.204(b) was the dispositive issue upon which the administrative law judge found that entitlement to benefits was precluded.

Claimant’s Brief in Support of Petition for Review, however, contains no allegation of error with respect to the administrative law judge’s total disability determination. In fact, claimant only requests that the Board review the record in its entirety and “accord the benefit of the weight of the medical evidence to Claimant,” but does not delineate how the administrative law judge erred in his analysis of the medical evidence relevant to total disability and fails to specify any factual or legal error in the administrative law judge’s findings or to brief his allegations in terms of relevant law on that issue. Claimant’s Brief in Support of Petition for Review at 3.

It is well established that a party challenging the administrative law judge’s decision must demonstrate with some degree of specificity the manner in which substantial evidence precludes the denial of benefits or why the administrative law judge’s decision is contrary to law. *See* 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-49 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Because claimant fails to state with specificity why the administrative law judge’s conclusions are contrary to law and has not otherwise raised any allegations of error under Section 718.204, he fails to provide a basis upon which the Board can review the administrative law judge’s findings. Inasmuch as claimant offers no specific legal or factual challenge to the administrative law judge’s rationale, we affirm the administrative law judge’s finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(b), a requisite element of entitlement under Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Consequently, we affirm the administrative law judge’s determination that claimant is not entitled to benefits in this case.

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.<sup>2</sup>

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge

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<sup>2</sup> Our decision affirming the administrative law judge's Decision and Order denying benefits because claimant failed to establish a totally disabling respiratory impairment precludes the need to address claimant's other arguments on appeal or to address employer's arguments, contained in its cross-appeal, regarding the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a), 725.309.