

BRB No. 00-1049 BLA

BILLY G. BEVINS)		
)		
Claimant-Petitioner)		
)		
v.)		
)		
RING ENTERPRISES, INCORPORATED)	DATE	ISSUED:
)		
and)		
)		
OLD REPUBLIC INSURANCE COMPANY)		
)		
Employer/Carrier-)		
Respondent)		
)		
DIRECTOR, OFFICE OF WORKERS')		
COMPENSATION PROGRAMS, UNITED)		
STATES DEPARTMENT OF LABOR)		
)		
Party-in-Interest)	DECISION and ORDER	

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Bobby Belcher (Wolfe & Farmer), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (99-BLA-1079) of Administrative Law Judge Daniel J. Roketenetz rendered 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).¹ Following a hearing on December 5, 1997, Administrative Law Judge Fletcher Campbell issued a Decision and Order denying benefits on February 24, 1998. Director's Exhibit 33. Claimant timely filed a request for modification on February 8, 1999. Director's Exhibit 38. The case was assigned to Judge Roketenetz (the administrative law judge), who held a hearing on modification on December 14, 1999, and issued the Decision and Order - Denial of Benefits dated June 23, 2000 before us on appeal.² After reviewing the findings of the previous the administrative law judges, the administrative law judge again credited claimant with eighteen and one-half years of coal mine employment, noting that no new evidence had been submitted on this issue. Considering the evidence submitted in support of the request for modification and the evidence submitted in support of claimant's last duplicate claim, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis or total disability, and therefore a basis for modification. Accordingly, benefits were denied.

On appeal, claimant sets forth the evidence favorable to his claim and contends that he is entitled to benefits. Employer responds, contending that claimant has not specifically challenged any of the administrative law judge's findings, and urges affirmance of the Decision and Order. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² Claimant filed earlier claims in 1970, 1983 and 1989 which were denied. Director's Exhibits 42, 43, 44. Claimant appealed the denial of his 1989 claim by Judge Edith Barnett to the Board which affirmed Judge Barnett's denial on June 29, 1995. Director's Exhibit 44. The instant claim was filed on February 4, 1997. Director's Exhibit 1.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United District Court for the District of Columbia granted limited injunctive relief and stayed for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claims, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Association v. Chao*, No 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on April 23, 2001, to which the Director and employer have responded, asserting that the regulations at issue in the lawsuit will not affect the outcome of this case. Claimant, however, asserts that the regulations do affect the outcome of this case. Having reviewed the briefs submitted by the parties and the record, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, we will proceed to adjudicate the merits of 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).

The Board is not permitted 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 a review tribunal. *See* 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). As the Board has 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 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'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*.

In the instant case, other than generally asserting that the medical evidence is sufficient to establish entitlement, claimant has not challenged the rationale provided by the administrative law judge for finding the evidence of record insufficient to establish the existence of pneumoconiosis and total disability. Claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law. Thus, we have no basis upon which to review the decision of the administrative law judge. *See* 20 C.F.R. §802.301(a); *Cox, supra; Sarf, supra; Slinker, supra; Fisher, supra*. Consequently we affirm the findings of the administrative law judge that the evidence of

record was insufficient to demonstrate the existence of pneumoconiosis or total disability and, therefore, a basis for modification. We, therefore, affirm the denial of benefits as it is supported by substantial evidence and is in accordance with law.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge