

BRB No. 01-0683 BLA

SHELBY SKAGGS	)	
(Widow of HERBERT SKAGGS)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
APPALACHIAN MINING,	)	DATE ISSUED:
INCORPORATED	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' FUND	)	
	)	
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 - Denying Benefits of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Robert W. Miller, Grayson, Kentucky, for claimant.

Robert Weinberger, Coal Workers' Pneumoconiosis Fund, Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order - Denying Benefits (99-BLA-0913) of

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<sup>1</sup> The miner died on March 9, 1998 while his claim was pending. Claimant, the miner's widow, is pursuing the miner's claim. Director's Exhibits 1, 27.

Administrative Law Judge Donald W. Mosser 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).<sup>2</sup> The administrative law judge credited claimant with twenty-one and three-quarters years of coal mine employment and found the evidence sufficient to establish total disability, but insufficient to establish the existence of pneumoconiosis and causation. Benefits were, accordingly, denied.

On appeal, claimant contends that there is evidence of record sufficient to support a finding of pneumoconiosis and causation. Claimant also contends that the amended regulations will affect the outcome of this case. Carrier responds urging affirmance of the Decision and Order - Denying Benefits of the administrative law judge as supported by substantial evidence, but contends that the amended regulations affect the outcome of this case. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal on the merits, and contends that the amended regulations will not affect the outcome of this case.

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 on a miner's claim pursuant to 20 C.F.R. §718, claimant must establish that the miner 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 precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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<sup>2</sup> 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, 722, 725 and 726). All citations to the regulations unless otherwise noted, refer to the amended regulations.

The Board is not required 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 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*.

In this 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 causation. Claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law. Thus, the Board has no basis upon which to review this part of the decision of the administrative law judge. *See* 20 C.F.R. §802.211(b); *Cox, supra; Slinker, supra; Fish, supra; Sarf, supra*. Consequently we must affirm the finding of the administrative law judge that the evidence of record was insufficient to demonstrate the existence of pneumoconiosis and causation. We, therefore, affirm the denial of benefits as it is supported by substantial evidence and is in accordance with law.

Further, after reviewing the regulations cited by claimant, carrier and the administrative law judge, we disagree with claimant and carrier that the amended regulations will affect the outcome of this case. The administrative law judge properly found that the amended regulations do not affect the outcome of this case. Decision and Order at 10-12.

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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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge