

BRB No. 00-0909 BLA

EDWARD MOORE)
)
 Claimant-Petitioner)
)
 v.)
)
 KING COAL COMPANY) DATE ISSUED:
)
 and)
)
 BITUMINOUS CASUALTY COMPANY)
)
 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 of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Robert M. Braden, Corbin, Kentucky, for claimant.

W. William Prochot (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Edward Waldman (Judith E. Kramer, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-0949) of Administrative Law Judge Robert L. Hillyard 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).¹ The instant case involves a claim filed on April 23, 1998.² After crediting claimant with twelve years and seven months of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). Although the

¹The 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.

²Claimant previously filed a claim for benefits on June 27, 1979. Director's Exhibit 26. The district director denied benefits on October 22, 1979 and June 20, 1980. *Id.* Pursuant to claimant's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. *Id.* Claimant subsequently filed a document entitled "Abandonment of Claim" with the Office of Administrative Law Judges on March 16, 1981. *Id.* By Order of Dismissal dated March 19, 1981, Administrative Law Judge Daniel J. Roketenetz elected to treat claimant's "Abandonment of Claim" as a request to withdraw his claim pursuant to 20 C.F.R. §725.306. *Id.* Judge Roketenetz approved claimant's request to withdraw his claim and ordered that the matter be dismissed. *Id.*

administrative law judge found that the evidence was sufficient to establish that claimant was disabled, the administrative law judge found that the evidence was insufficient to establish that claimant's disability was due to pneumoconiosis. Accordingly, the administrative law judge denied benefits. On appeal, claimant argues that the administrative law judge erred in finding that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4) (2000). Claimant also challenges the administrative law judge's finding that the evidence was insufficient to establish that his total disability was due to pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States 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 claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Ass'n 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 March 9, 2001, to which employer and the Director have responded.³ Based on the briefs submitted by employer and the Director,⁴ and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

Claimant generally contends that the administrative law judge erred in finding the evidence insufficient to establish that his total disability was due to pneumoconiosis. Employer argues that claimant's brief fails to raise any specific error on this issue. We agree. Claimant's brief neither raises any substantive issues nor identifies any specific error on the part of the administrative law judge in

³Pursuant to the Board's instructions, the failure of a party to submit a brief within 20 days following receipt of the Board's Order issued on March 9, 2001, is construed as a position that the challenged regulations will not affect the outcome of this case.

⁴Employer and the Director, Office of Workers' Compensation Programs, assert that the amended regulations do not affect the outcome of this case.

determining that the evidence was insufficient to establish that claimant's total disability was due to pneumoconiosis. See 20 C.F.R. §718.204(c).⁵ We, therefore, affirm the administrative law judge's finding that claimant failed to establish that his total disability was due to pneumoconiosis. See *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

In light of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish that claimant's total disability is due to pneumoconiosis, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's challenge to the administrative law judge's findings at 20 C.F.R. §718.202(a)(1) and (a)(4) (2000). *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

⁵The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now set out at 20 C.F.R. §718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

MALCOLM D. NELSON, Acting
Administrative Appeals Judge