

BRB No. 97-1444 BLA

FRANK E. WORTHINGTON)		
)		
Claimant-Petitioner)		
)		
v.)	DATE	ISSUED:
)		
DIRECTOR, OFFICE OF WORKERS')		
COMPENSATION PROGRAMS, UNITED)		
STATES DEPARTMENT OF LABOR)		
)		
Respondent)	DECISION and ORDER	

Appeal of the Decision and Order of Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Howell G. Clements, Chattanooga, Tennessee, for claimant.

Barry H. Joyner (Marvin Krislov, Deputy Solicitor for National Operations; 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 and McGRANERY, Administrative Appeals Judges.

Claimant appeals the Decision and Order (96-BLA-0185) of Administrative Law Judge Jeffrey Tureck 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 This case is before the Board for the third time. In the original Decision and Order, Administrative Law Judge John S. Patton, based on the parties' stipulation, credited claimant with in excess of ten years of coal mine employment and adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Part 718. Judge Patton found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.302. Judge Patton also found the evidence sufficient to establish total disability due to pneumoconiosis. 20 C.F.R. §718.204. Accordingly, Judge Patton awarded benefits. The Director, Office of Workers' Compensation Programs (the Director), appealed the award of benefits and the Board

¹Claimant filed his claim on March 1, 1983. Director's Exhibit 2.

vacated Judge Patton's decision, and remanded the case for further consideration at 20 C.F.R. §§718.202(a)(1) and 718.204(c). *Worthington v. Director, OWCP*, BRB No. 88-1604 BLA (July 31, 1990)(unpub.).

On remand, the case was reassigned to Administrative Law Judge G. Marvin Bober who found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Judge Bober also found the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). Accordingly, Judge Bober denied benefits. In disposing of claimant's appeal, the Board vacated Judge Bober's denial of benefits, and remanded the case for further consideration of the evidence under 20 C.F.R. §§718.202(a)(4), 718.204(c)(4) and 718.204(b). Further, the Board instructed Judge Bober that if he determines that the record does not contain a complete, credible pulmonary examination, he should either reopen the record or remand the case to the district director to permit the Director to comply with his statutory obligation. *Worthington v. Director, OWCP*, BRB No. 92-0265 BLA (Apr. 20, 1994)(unpub.).

Thereafter, the case was returned to the Office of Administrative Law Judges (OALJ) and subsequently remanded to the district director for a complete and credible pulmonary evaluation. Director's Exhibit 61. On August 18, 1995, the district director issued a Proposed Decision and Order Following Remand which denied benefits based on claimant's failure to establish the existence of pneumoconiosis. Director's Exhibit 64. Claimant subsequently requested a hearing and the case was forwarded to the OALJ. Administrative Law Judge Jeffrey Tureck (the administrative law judge) held a hearing and subsequently issued a decision wherein he found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits. On appeal, claimant generally contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also contends that the evidence is sufficient to establish total disability at 20 C.F.R. §718.204(c). The Director responds, urging affirmance of the administrative law judge's Decision and Order.²

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

²Inasmuch as the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3) are not challenged on appeal, we affirm these findings. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Claimant generally contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (a)(4). However, claimant does not delineate how the administrative law judge erred in his analysis of the evidence at 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant merely notes the presence of positive x-ray interpretations and other medical opinions that indicate that he suffers from pneumoconiosis. Thus, claimant has failed to allege any specific error in the administrative law judge's findings or legal conclusions, and as such, claimant fails to provide a basis upon which the Board may review the administrative law judge's findings.³ 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); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Therefore, we affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4).

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, the administrative law judge properly denied benefits under 20 C.F.R. Part 718.⁴ See *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

³The administrative law judge's findings on the merits that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4) are furthermore supported by substantial evidence.

⁴In view of our disposition of this case at 20 C.F.R. §718.202(a), we need not address claimant's assertion that the evidence is sufficient to establish total disability at 20 C.F.R. §718.204(c).

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

REGINA C. McGRANERY
Administrative Appeals Judge