

BRB No. 06-0209 BLA

MACK ARTHUR CANTRELL)
)
 Claimant-Petitioner)
)
 v.)
)
 SCOTTS BRANCH COAL COMPANY)
)
 and) DATE ISSUED: 11/28/2006
)
 MAPCO, INCORPORATED)
)
 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 on Remand of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (03-BLA-5633) of Administrative Law Judge Robert L. Hillyard awarding 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, involving a subsequent claim

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 20 C.F.R. Parts 718, 722, 725, and 726

filed on February 27, 2001, is before the Board for the second time.² In the initial decision, Administrative Law Judge Robert L. Hillyard (the administrative law judge), after crediting claimant with fifteen years of coal mine employment, found that the newly submitted x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), thereby establishing that one of the applicable conditions of entitlement had changed since the date upon which claimant's prior 1991 claim became final. 20 C.F.R. §725.309. The administrative law judge, therefore, considered the merits of claimant's 2001 claim. The administrative law judge found that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to

(2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

²The relevant procedural history of this case is as follows: Claimant initially filed a claim for benefits on April 1, 1991. Director's Exhibit 1. In a Decision and Order dated September 14, 1992, Administrative Law Judge Bernard J. Gilday, Jr., after crediting claimant with fourteen years and one month of coal mine employment, found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). *Id.* Accordingly, Judge Gilday denied benefits. *Id.* By Decision and Order dated September 20, 1993, the Board affirmed Judge Gilday's denial of benefits. *Cantrell v. Scotts Branch Mine*, BRB No. 93-0170 BLA (Sept. 20, 1993) (unpublished).

Claimant subsequently filed a request for modification. Director's Exhibit 1. In a Decision and Order dated March 19, 1996, Administrative Law Judge Michael P. Lesniak found that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). *Id.* Judge Lesniak also found that the newly submitted evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000). *Id.* Judge Lesniak, therefore, found that claimant failed to establish a change in conditions pursuant to 20 C.F.R. §725.310 (2000). *Id.* Judge Lesniak also found that there was not a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000). *Id.* Accordingly, Judge Lesniak denied benefits. *Id.* By Decision and Order dated January 21, 1997, the Board affirmed Judge Lesniak's findings pursuant to 20 C.F.R. §§718.202 (2000) and 718.204(c) (2000), as unchallenged on appeal. *Cantrell v. Scotts Branch Coal Co.*, BRB No. 96-0845 BLA (Jan. 21, 1997) (unpublished). Alternatively, the Board affirmed, as based upon substantial evidence, Judge Lesniak's findings on the merits that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000) and total disability pursuant to 20 C.F.R. §718.204(c) (2000). *Id.* There is no indication that claimant took any further action in regard to his 1991 claim.

Claimant filed a second claim on February 27, 2001. Director's Exhibit 3.

20 C.F.R. §718.202(a)(1). The administrative law judge further found that claimant was entitled to the presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge, however, found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Because the administrative law judge found that the evidence was insufficient to establish the existence of complicated pneumoconiosis, the administrative law judge also found that claimant was precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. Accordingly, the administrative law judge denied benefits. By Decision and Order dated March 30, 2005, the Board affirmed the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§718.202(a), 718.203(b), 718.204(b) and 725.309 as unchallenged on appeal. *Cantrell v. Scotts Branch Coal Co.*, BRB No. 04-0623 BLA (Mar. 30, 2005) (unpublished). However, the Board vacated the administrative law judge's finding that the evidence was insufficient to establish the existence of complicated pneumoconiosis and remanded the case to the administrative law judge for his reconsideration of whether claimant is entitled to the irrebuttable presumption set forth at 20 C.F.R. §718.304. *Id.*

On remand, the administrative law judge found that the evidence was sufficient to establish the existence of complicated pneumoconiosis, thereby enabling claimant to establish entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits. On appeal, employer generally contends that the administrative law judge erred in finding the evidence sufficient to establish the existence of complicated pneumoconiosis. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

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).

Although employer generally argues that the administrative law judge erred in finding the evidence sufficient to establish the existence of complicated pneumoconiosis, we hold that its brief does not provide an adequate basis for review. Because the Board is not empowered to engage in a *de novo* proceeding or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301. In this case, employer's statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that the evidence is sufficient to establish the existence of complicated 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). Consequently, we affirm the administrative law judge's finding that the evidence is sufficient to establish the existence of complicated pneumoconiosis, thereby

enabling claimant to establish entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge