

BRB No. 10-0397 BLA

JAMES I. WATSON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
ISLAND CREEK COAL COMPANY)	
)	DATE ISSUED: 11/18/2011
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

Allison B. Moreman (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (08-BLA-5532) of Administrative Law Judge Daniel F. Solomon awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l))

(the Act). This case involves a subsequent claim filed on May 29, 2007.¹ After crediting claimant with twenty-eight years of coal mine employment,² the administrative law judge found that the evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge also found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b), and that claimant's total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). In light of these findings, the administrative law judge also found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge improperly shifted the burden of proof by requiring employer to disprove the existence of pneumoconiosis. Employer also requests that the Board remand this case to the administrative law judge, to allow for the further development of evidence in light of recently enacted amendments to the Act. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's award of benefits. The Director also contends that it is not necessary to remand the case for further development of the evidence.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish

¹ Claimant filed a previous claim for benefits on April 21, 2004. Director's Exhibit 1. The district director denied the claim on March 3, 2005, because claimant failed to establish any element of entitlement. *Id.* There is no indication that claimant took any further action in regard to his 2005 claim.

² The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

any one 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*).

Employer generally contends that the administrative law judge “improperly shifted the burden of proof to [employer] to disprove the existence of coal workers’ pneumoconiosis.” Employer’s Brief at 5. Employer argues that, based on “his improper burden-shifting,” the administrative law judge found that claimant suffers from legal pneumoconiosis, and that his total disability is due to pneumoconiosis. *Id.* at 5-6. Contrary to employer’s contention, the administrative law judge made clear in his decision that claimant “has the general burden of establishing entitlement” Decision and Order at 5. In regard to the issue of legal pneumoconiosis, the administrative law judge explicitly recognized that the “burden is on . . . [c]laimant to prove that his coal-mine employment caused his lung disease.” *Id.* at 11. Employer has not provided any example of where the administrative law judge improperly shifted the burden of proof in this case. 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). 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. Consequently, we reject employer’s contention that the administrative law judge improperly shifted the burden of proof from claimant to employer. Because employer does not allege any other errors in the administrative law judge’s findings, we affirm the administrative law judge’s award of benefits.

Employer argues further that this case should be remanded for further development of the evidence in light of recent amendments to the Act. Congress recently enacted amendments to the Act, which became effective on March 23, 2010, affecting claims filed after January 1, 2005. Relevant to this living miner’s claim, Section 1556 of Public Law No. 111-148 reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Under amended Section 411(c)(4), if a miner establishes at least fifteen years of qualifying coal mine employment, and that he or she has a totally disabling respiratory impairment, there will be a rebuttable presumption that he or she is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)).

The amendment enacted by Section 1556 is potentially applicable to this claim, because it was filed after January 1, 2005. However, in light of our affirmance of the administrative law judge’s award of benefits, there is no need to remand the case for further consideration. Because claimant carried his burden to establish each element of entitlement by a preponderance of the evidence, there is no need to consider whether he could establish entitlement with the aid of the rebuttable presumption reinstated by Section 1556.

Accordingly, the administrative law judge's Decision and Order 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