

BRB Nos. 01-0144 BLA
and 01-0144 BLA-A

ROBERT L. EDDY)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	DATE ISSUED:
)	
Employer-Respondent)	
Cross-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 L. Leland, Administrative Law Judge, United States Department of Labor.

J. Douglas Crane (J. Douglas Crane, L.C.), Morgantown, West Virginia, for claimant.

Kathy L. Snyder (Jackson & Kelly, PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-996) of Administrative Law Judge Daniel L. Leland 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). The administrative law judge found, and the parties stipulated to,

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

thirty-five years of qualifying coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718. Decision and Order at 2-3, 5; Director's Exhibit 1. The administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000) or that he was totally disabled pursuant to 20 C.F.R. §718.204(c)(1)-(4) (2000). Decision and Order at 5-7. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in failing to find the existence of pneumoconiosis established based upon the x-ray evidence. Employer responds asserting that the denial of benefits is supported by substantial evidence, and asserts on cross-appeal that the case must be remanded for the administrative law judge to rule on employer's objection to claimant's late submission of evidence if the Board does not affirm the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and the conclusions of law are rational, supported by substantial evidence, and in accordance with the law. 33 U.S.C. §921(b)(3), as incorporated into the Act 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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, 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; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director*,

on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, 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, determined that the regulations at issue in the lawsuit would 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). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001).

²Claimant filed this claim for benefits on December 1, 1998. Director's Exhibit 1.

OWCP, 9 BLR 1-1 (1986)(*en banc*).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. On appeal, claimant does not challenge the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) - (4) (2000). We therefore affirm these findings as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Consequently, we affirm the administrative law judge's denial of benefits.

Inasmuch as claimant has failed to establish total disability, a requisite element of entitlement in a miner's claim pursuant to 20 C.F.R. Part 718, entitlement thereunder is precluded. *See Trent, supra; Perry, supra*. Moreover, we need not address employer's argument on cross-appeal since we affirm the denial of benefits and, thus, this case no longer presents any real case or controversy for adjudication. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990).

³On appeal, claimant challenges the administrative law judge's findings made pursuant to 20 C.F.R. §718.202(a)(1) (2000). Claimant's Brief at 2-3. Claimant fails to allege any specific factual or legal error with respect to the administrative law judge's total disability findings. As we have emphasized previously, the Board will decline to review an administrative law judge's Decision and Order where petitioner fails to allege any specific error or sufficiently brief allegations respecting law and evidence. 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). As the administrative law judge's finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204 (2000) is affirmed, we need not address the administrative law judge's findings at Section 718.202(a)(1) (2000) or claimant's arguments thereunder. *See Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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

NANCY S. DOLDER
Administrative Appeals Judge