

BRB No. 05-0309 BLA

TUSCON HERALD)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
OXBOW CARBON & MINERALS, INCORPORATED)	
)	
and)	
)	DATE ISSUED: 10/24/2005
TRAVELERS INSURANCE 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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Leroy Lewis (Law Office of Phillip Lewis), Hyden, Kentucky, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-5991) of Administrative Law Judge Daniel J. Roketenetz 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). This case involves a subsequent claim filed on April 19, 2001.¹ After crediting claimant with twenty years of coal mine employment, the administrative law judge found that the newly submitted evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). The administrative law judge also found that the newly submitted evidence was insufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). The administrative law judge, therefore, found that none of the applicable conditions of entitlement has changed since the date upon which claimant's prior claim became final. Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that Dr. Gilbert's opinion is sufficient to establish that he is totally disabled due to pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not 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).

Claimant's 2001 claim is considered a "subsequent" claim under the amended regulations because it was filed more than one year after the date that claimant's prior 1994 claim was finally denied. 20 C.F.R. §725.309(d). The regulations provide that a subsequent claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement² has changed since the date upon which the order

¹The relevant procedural history of this case is as follows: Claimant initially filed a claim for benefits on February 2, 1984. Director's Exhibit 1. The district director denied the claim on May 1, 1984 and July 13, 1984. *Id.* On August 3, 1984, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. *Id.* Administrative Law Judge Lawrence E. Gray conducted a hearing on July 22, 1986. *Id.* At the hearing, claimant's counsel, Nancy M. Collins, informed Judge Gray that claimant was currently engaged in coal mine employment and no longer desired to pursue his claim. *Id.* Judge Gray noted claimant's motion and remanded the case to the district director for appropriate action. *Id.* By Order dated September 10, 1986, the district director dismissed claimant's 1984 claim. *Id.* There is no indication that claimant took any further action in regard to his 1984 claim.

Claimant filed a second claim on April 19, 2001. Director's Exhibit 3.

²The regulations provide that a miner, in order to satisfy the requirements for entitlement to benefits, must establish the existence of pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; that he is totally disabled; and that

denying the prior claim became final. *Id.* Claimant's 1994 claim was denied because the district director found that the evidence was insufficient to establish that claimant was totally disabled due to pneumoconiosis. Director's Exhibit 1. Consequently, in order to demonstrate that one of the applicable conditions of entitlement has changed pursuant to 20 C.F.R. §725.309, the newly submitted evidence must support a finding of total disability.

Employer contends that claimant's brief does not provide an adequate basis for review. We agree. 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, claimant's statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that the newly submitted evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). *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 newly submitted evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b).

In light of our affirmance of the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b), we also affirm the administrative law judge's finding that none of the applicable conditions of entitlement has changed since the date upon which claimant's prior claim became final. 20 C.F.R. §725.309.

pneumoconiosis contributed to his total disability. 20 C.F.R. §725.202(d). The applicable conditions of entitlement are limited to those conditions upon which the prior denial was based. *See* 20 C.F.R. §725.309(d)(2).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge