

BRB No. 98-0157 BLA

ANN MARINKOVICH)
(Widow of GEORGE MARINKOVICH))
)
Claimant-Petitioner))
)
v.)
)
BETH ENERGY MINES, INCORPORATED) DATE ISSUED:
)
Employer-Respondent)
)
DIRECTOR, OFFICE OF WORKERS'))
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Tamora L. Reese (Peter J. Daley & Associates), California, Pennsylvania, for claimant.

Carl J. Smith, Jr. (Richman & Smith), Washington, Pennsylvania, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order (96-BLA-1270) of Administrative

¹ Claimant is Ann Marinkovich, the miner's widow. The miner, George Marinkovich, filed a claim for benefits on October 9, 1980, which was denied on November 13, 1984. Director's Exhibit 27. The miner died on October 15, 1994 and claimant filed a survivor's claim on December 12, 1994, which was denied on May 31, 1995. Director's Exhibits 1, 5, 8. Claimant filed a petition for modification on August 11, 1995. Director's Exhibit 11.

Law Judge Thomas M. Burke 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 that claimant failed to establish that the miner's death was due to, or hastened by, pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and thus, failed to establish either a mistake in a determination of fact or a change in conditions pursuant to 20 C.F.R. §725.310. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds urging affirmance of the Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate in this appeal.

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).

In order to establish entitlement to benefits under Part 718 based on a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that death was due to, or hastened by, pneumoconiosis. See 30 U.S.C. §901(a); 20 C.F.R. §§718.1, 718.205, 725.201; *Lukosevich v. Director, OWCP*, 888 F. 2d 1001, 13 BLR 2-100 (3d Cir. 1989); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988).

Claimant generally contends that the administrative law judge erred in failing to award benefits. Claimant's Brief at 4-8. The Board is not authorized to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of authority between the administrative law judge as the trier-of-fact, and the Board as a reviewing tribunal. See 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). The Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order with specificity and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. See 20 C.F.R. §802.211(b); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *Sarf, supra*. Unless the party identifies errors and briefs its allegations in terms of the relevant law and evidence, the Board

has no basis upon which to review the decision. See *Sarf, supra*; *Fish, supra*.

In the instant claim, other than generally asserting that Dr. Perper's opinion is entitled to greater weight than the opinions of Drs. Pataki, Naeye and Kleinerman, claimant fails to make any allegations of error in the administrative law judge's findings pursuant to Section 718.205(c) or Section 725.310. As claimant's counsel has failed to adequately raise or brief any issues arising from the administrative law judge's findings pursuant to Sections 718.205(c) and 725.310, the Board has no basis upon which to review the findings. Thus, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to, or hastened by, pneumoconiosis pursuant to Section 718.205(c), that claimant failed to establish modification pursuant to Section 725.310, and the denial of benefits.²

² We note that the administrative law judge's findings that claimant failed to establish that the miner's death was due to, or hastened by, pneumoconiosis pursuant to 20 C.F.R. §718.205(c) is supported by substantial evidence as the administrative law judge rationally relied on the substantial qualifications and expertise of Drs. Kleinerman, Naeye and Pataki and found that the preponderance of the medical opinion evidence does not support a finding that pneumoconiosis substantially contributed to the miner's death. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983); Decision and Order at 7. While the record does not clearly indicate

whether Dr. Pataki's opinion was submitted in compliance with 20 C.F.R. §725.456(b)(1), a remand is not required, however, because substantial evidence supports the administrative law judge's finding that the preponderance of the medical opinion evidence does not support a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

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

MALCOLM D. NELSON, Acting
Administrative Appeals Judge