

BRB No. 03-0163 BLA

HOMER F. STARCHER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
C & T DEVELOPMENT,)	DATE ISSUED: 09/22/2003
INCORPORATED)	
)	
Employer-Respondent)	
)	
and)	
)	
JULIANA MINING COMPANY)	
)	
and)	
)	
WEST VIRGINIA COAL-WORKERS')	
PNEUMOCONIOSIS FUND)	
)	
Employers/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 Denying Benefits of Robert J. Lesnick, Administrative Law Judge, United States Department of Labor.

Belinda S. Morton, Fayetteville, West Virginia, for claimant.

Robert Weinberger (West Virginia Employment Programs Litigation Unit), Charleston, West Virginia, for Juliana Mining Company/carrier.

Barry H. Joyner (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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: McGRANERY, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (01-BLA-0924) of Administrative Law Judge Robert J. Lesnick 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 The administrative law judge found that both C & T Development, Incorporated and Juliana Mining Company are properly designated as responsible operators. The administrative law judge credited claimant with twenty years of coal mine employment. Considering the instant claim on its merits, the administrative law judge found that the x-ray and medical opinion evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202 pursuant to *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The administrative law judge also found that claimant established that his pneumoconiosis arose out of his coal mine employment at 20 C.F.R. §718.203(b). The administrative law judge further found, however, that the relevant evidence is insufficient to establish a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204. Accordingly, benefits were denied.

On appeal, claimant summarily contends that the evidence of record establishes that claimant is totally disabled due to pneumoconiosis and, thus, benefits should be granted. Claimant also states, "The resting blood gas test qualifies as evidence of total disability. One qualifying blood gas score is enough evidence to show that the claimant has a significant lung impairment." Claimant's Brief at 2. Employer responds, and seeks affirmance of the denial of benefits based on the administrative law judge's finding that the evidence fails to establish that claimant is totally disabled due to a respiratory or pulmonary impairment. Employer also contends that the administrative law judge erred in finding that claimant established the existence of pneumoconiosis, and urges the Board to reverse the administrative law judge's finding at 20 C.F.R. §718.202(a). The Director, Office of Workers' Compensation Programs (the Director), responds, and contends that since claimant fails to allege any specific error, the Board should affirm the decision below. The Director further contends that in the event that the Board reaches the merits of the case, it should affirm the administrative law judge's denial of benefits based on his finding that the evidence

¹ The 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

fails to establish that claimant is totally disabled under 20 C.F.R. §718.204, as the finding is supported by substantial evidence. The Director additionally states that, should the Board reach the merits of the case and not affirm the administrative law judge's denial of benefits, the case must be remanded for the administrative law judge to determine which of the two named responsible operators is *the* responsible operator in this case.

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant summarily contends that the evidence of record establishes that claimant is totally disabled due to pneumoconiosis. The limited scope of the Board's review of an administrative law judge's Decision and Order necessarily requires a petitioner to identify specific legal or factual errors therein. *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). In the instant case, claimant fails to assign any error, specific or general, to the administrative law judge's finding that the evidence is insufficient to establish total respiratory or pulmonary disability at 20 C.F.R. §718.204. Moreover, claimant's recitation of medical evidence, namely a qualifying blood gas study, does not fulfill his duty to identify any error with specificity or to raise and brief any issues arising from the administrative law judge's findings. 20 C.F.R. §802.211(a), (b); *Sarf*, 10 BLR at 1-120. We thus hold that claimant fails to invoke the Board's review of the administrative law judge's findings and, therefore, the Board is compelled to affirm the denial of benefits. *Id.* at 1-121. Consequently, we affirm the denial of benefits based on the administrative law judge's finding that the evidence fails to establish total respiratory or pulmonary disability at 20 C.F.R. §718.204.²

² The administrative law judge's finding that the evidence fails to establish total disability at 20 C.F.R. §718.204 is additionally supported by substantial evidence. The two pulmonary function studies of record both resulted in non-qualifying values. 20 C.F.R. §718.204(b)(2)(i). Of the two blood gas studies of record, the administrative law judge correctly noted that only the "at rest" portion of Dr. Rasmussen's September 28, 2000 pulmonary function study resulted in qualifying values. 20 C.F.R. §718.204(b)(2)(ii). The administrative law judge further properly determined that Dr. Rasmussen found "only minimal loss of lung function" and opined that claimant retains the pulmonary capacity to perform his last regular coal mine job. Director's Exhibit 9. Further, Dr. Zaldivar opined that claimant is not disabled from any cause, Director's Exhibit 27. 20 C.F.R. §718.204(b)(2)(iv). Lastly, there is no evidence that claimant suffers from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii).

Based on the foregoing, we affirm the denial of benefits without reaching the administrative law judge's findings on the merits of the case. Consequently, we decline to address employer's arguments that the administrative law judge properly found that the evidence fails to establish total disability at 20 C.F.R. §718.204 and that the administrative law judge erred in finding that the evidence establishes the existence of pneumoconiosis at 20 C.F.R. §718.202. We also need not address the Director's arguments that the administrative law judge properly found that the evidence fails to establish total disability at 20 C.F.R. §718.204 and that the case must be remanded for a determination on the issue of the responsible operator.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge