

BRB No. 97-0622 BLA

CHARLIE LAWSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SHAMROCK COAL COMPANY, INC.)	DATE ISSUED:
)	
and)	
)	
EMPLOYERS SERVICE CORPORATION)	
)	
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 - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

McKinnley Morgan, Hyden, Kentucky, for claimant.

Harold Rader (Law Offices of Neville Smith), Manchester, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (95-BLA-1828) of Administrative Law Judge Robert L. Hillyard 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 administrative law judge properly considered the instant claim filed in 1993 pursuant to the permanent regulations at 20 C.F.R. Part 718. After accepting the parties' stipulation of twenty-seven years of coal mine employment, the administrative law

judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly benefits were denied. Claimant appeals, arguing that the administrative law judge erred in giving undue weight to the number of x-rays submitted by employer in finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant also argues that the administrative law judge failed to give claimant the presumption that pneumoconiosis was the cause of his breathing impairment. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this case.¹

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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

In his brief, claimant contends that the administrative law judge failed to give claimant the presumption that pneumoconiosis was the cause of his breathing impairment. Contrary to claimant's suggestion, the administrative law judge properly found that the presumptions of total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.304 and 718.305 were unavailable inasmuch as the record is devoid of evidence of complicated pneumoconiosis and claimant's application for benefits was filed after January 1, 1982. See 20 C.F.R. §§718.304, 718.305(e). Moreover, the administrative law judge properly found that the presumption of entitlement provided at 20 C.F.R. §718.306 was unavailable in this living miner's claim. See 20 C.F.R. §718.306(a).

¹The administrative law judge's decision to credit claimant with twenty-seven years of coal mine employment and his findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(4) are affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The Board's circumscribed scope of review requires the challenging party to demonstrate in his petition for review and brief that substantial evidence does not support the result reached or to demonstrate why that result is contrary to law. See *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Claimant's brief neither raises any substantive issues nor identifies any specific error on the part of the administrative law judge with regard to his determination that claimant failed to establish total disability pursuant to Section 718.204(c)(1)-(4). Since claimant has not provided the Board with a basis to review the administrative law judge's findings at Section 718.204(c)(1)-(4), these findings are affirmed. *Id.*

Inasmuch as claimant has failed to establish total disability, a necessary element of entitlement under Part 718, an award of benefits is precluded. See *Trent, supra*; *Perry, supra*. We, therefore, decline to address claimant's allegation of error on the part of the administrative law judge in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), as any error therein would be harmless. *Larioni v. Director, OWCP*, 6 BLR 1-710 (1983); see *Perry, supra*.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge