

BRB No. 97-1560

LYNWOOD R. GRADDY)
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 Claimant-Petitioner) DATE ISSUED:
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 v.)
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 THE HARDAWAY COMPANY)
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 and)
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 CIGNA INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Decision and Order Denying Claimant's Motion for Reconsideration of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Roscoe E. Long, Dunedin, Florida, for claimant.

John F. Sharpless (Law Offices of John S. Smith, P.A.), Tampa, Florida, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and the Decision and Order Denying Claimant's Motion for Reconsideration (95-LHC-2115) of Administrative Law Judge Pamela Lakes Wood rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Employer, a civil constructor, manufactures pre-stressed beams and pilings for use in buildings and bridges. Employer's facility is located on a peninsula which adjoins Tampa Bay, Florida. Claimant, a laborer, sustained an injury during the course of his employment with employer on April 5, 1991, when, while riding in the back of a pickup truck, he fell off the tool box on which he was sitting due to the sudden acceleration of the truck. Claimant suffered a lower back strain as a result of this incident and was given light duty assignments. Subsequently, on May 21, 1991, claimant alleged that due to complaints of pain he could no longer work. Employer voluntarily paid claimant disability benefits pursuant to the Florida state workers' compensation system from May 28, 1991 through August 28, 1991. Claimant thereafter returned to work for employer, but subsequently left that employment in October 1991, for reasons unrelated to the April 1991 work-incident.

In her Decision and Order, the administrative law judge addressed only the issue of whether claimant satisfied the situs and status requirements for jurisdiction under the Act. In this regard, the administrative law judge initially discredited claimant's assertion that part of his job requirements consisted of loading and unloading barges, and found that claimant was not involved in loading or unloading material onto barges until after the April 5, 1991 incident when, on one occasion, claimant performed this activity. The administrative law judge thereafter found that claimant failed to establish the status requirement for coverage under Section 2(3) of the Act, 33 U.S.C. §902(3)(1994). Next, the administrative law judge found that claimant failed to establish the situs requirement for coverage under Section 3(a) of the Act, 33 U.S.C. §903(a)(1994), as claimant did not provide evidence with regard to the location of employer's warehouse and the pickup truck at the time of the April 5, 1991 incident. Thus, the administrative law judge denied benefits. Thereafter, claimant filed a motion for reconsideration with the administrative law judge, which the administrative law judge denied, finding that the additional evidence claimant submitted in support of his motion failed to establish that either the situs or status element of the Act was met.

On appeal, claimant has filed with the Board a petition for review which is nearly identical to his written closing arguments and motion for reconsideration filed before the administrative law judge, contending that claimant's employment with employer meets the status and situs elements for jurisdiction. Employer responds, urging affirmance of the administrative law judge's decision. Specifically, employer argues that claimant, in his petition for review, failed to set forth specific errors of the administrative law judge and did not identify the legal basis for his appeal; thus, since claimant's petition for review is insufficient to invoke the Board's review, employer avers that the administrative law judge's decision should be affirmed on this basis as well as on the merits.

The Benefits Review Board is authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees arising under the Longshore Act and its extensions. See 33 U.S.C. §921(b)(3). The findings of fact in the administrative law judge's decision "shall be conclusive if supported by substantial evidence in the record as a whole." *Id.* The circumscribed scope of the Board's review authority necessarily requires a party challenging the decision below to address that decision with specificity and demonstrate that the result achieved is not supported by substantial evidence or in accordance with law.

The Board's Rules of Practice and Procedure further provide that a party's petition for review to the Board shall list "the *specific* issues to be considered on appeal" and that "[e]ach petition for review shall be accompanied by a . . . statement which: *Specifically* states the issues to be considered by the Board." See 20 C.F.R. §802.211(a), (b) (emphasis added). Where a party is represented by counsel, mere assignment of error is not sufficient to invoke Board review. See *Carnegie v. C & P Telephone Co.*, 19 BRBS 57 (1986).

In the instant case, claimant has failed to meet these threshold requirements. Specifically, claimant's Petition for Review, which is nearly identical to the post-hearing memorandum and Petition for Reconsideration which he submitted to the administrative law judge, fails to either address the administrative law judge's decision or identify an error committed by the administrative law judge below. Rather, claimant's brief merely recites the law with regard to the status and situs requirements for jurisdiction under the Act, and, without explanation or analysis, contends that claimant has met these elements. Claimant has not demonstrated that substantial evidence does not support the administrative law judge's decision. Merely filing a copy of a post-hearing brief as a petition for review and brief, without more, is insufficient to satisfy the requirements of the Act and regulations. See *Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990); *West v. Washington Metropolitan Area Transit Authority*, 21 BRBS 125 (1988). As claimant has failed to raise a substantial issue for the Board to review, the decision below must be affirmed.

Accordingly, the Decision and Order Denying Benefits and the Decision and Order Denying Claimant's Motion for Reconsideration of the administrative law judge are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge