BRB No. 06-0284

ROMEO FERRER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TODD PACIFIC SHIPYARDS	)	DATE ISSUED: 09/22/2006
	)	
and	)	
	)	
LIBERTY NORTHWEST INSURANCE CORPORATION	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Order Denying Motion for Reconsideration of Paul A. Mapes, Administrative Law Judge, United States Department of Labor.

John F. Warner, Kent, Washington, for claimant.

Russell A. Metz (Metz & Associates, P.S.), Seattle, Washington, for employer/carrier.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and the Order Denying Motion for Reconsideration (2005-LHC-0252) of Administrative Law Judge Paul A. Mapes 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 and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant sought benefits under the Act for chronic obstructive pulmonary disease, arthritis and degenerative joint disease which he asserted were causally related to his employment as a marine painter for employer. In his Decision and Order, the administrative law judge found that claimant failed to establish the existence of working conditions which could have caused his respiratory and joint problems. The administrative law judge therefore concluded that as claimant did not establish his *prima facie* case, he is not entitled to invocation of the Section 20(a) presumption, 33 U.S.C. §920(a), that his present conditions are work-related. The administrative law judge alternatively found that, assuming the Section 20(a) presumption was invoked, employer produced substantial evidence sufficient to rebut the presumption. Thereafter, the administrative law judge addressed the record as a whole and concluded that claimant did not establish that his respiratory and joint problems are causally related to his employment with employer. In his Order Denying Motion for Reconsideration, the administrative law judge reaffirmed his determination that the evidence considered as a whole does not establish that claimant's conditions are causally related to his employment with employer.

Claimant appeals the administrative law judge's denial of benefits. In support of his appeal, claimant has filed with the Board a Petition for Review, which states in its entirety as follows:

> Petitioner disagrees with the conclusion that is contained in petitioners [sic] exhibit one, that Section 4 is not related to Mr. Ferrer's employment. The physicians state clearly "Given his type of work, particularly using power tools in this right hand dominant man, he is at risk for epicondylitis. He will file a claim next week through his employer." Dr. David M. Chaplin M.D. in his deposition agreed with the conclusion as stated in Petitioners Ex. 1. Factually it is apparent that all parties believe that a claim filed by the petitioner was the correct path to follow and that the condition must be related to petitioners [sic] employment.

Claimant attached to this statement a single page from the deposition testimony of Dr. Chaplin, EX 19 at 13, and a single page from the report of a March 26, 2004 examination by Drs. Burke and Martin at Harborview Medical Center. CX 1 at 4; EX 8 at 15. Employer responds, asserting, first, that claimant's Petition for Review fails to raise a substantial question of law or fact in relation to the administrative law judge's Decision and Order, and, second, that the administrative law judge's decision is supported by substantial evidence.

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. *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 and demonstrate why substantial evidence does not support the result reached. *Shoemaker v. Schiavone and Sons, Inc.*, 20 BRBS 214, 218 (1988).

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." 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 Collins v. Oceanic Butler, Inc.,* 23 BRBS 227 (1990); *Carnegie v. C&P Telephone Co.,* 19 BRBS 57 (1986). The party's brief must contain a discussion of the relevant law and evidence. *See Shoemaker,* 20 BRBS at 218.

In the instant case, claimant has failed to meet these threshold requirements. Specifically, claimant's Petition for Review fails to either address the administrative law judge's decision or identify error committed by the administrative law judge below. Consequently, claimant has not demonstrated that substantial evidence does not support the administrative law judge's decision. Merely contending that certain medical evidence supports entitlement to compensation, without more, is insufficient to satisfy the requirements of the Act and its regulations. As claimant has failed to raise a substantial issue for the Board to review, the decision below must be affirmed. *See Collins,* 23 BRBS 227; *Shoemaker,* 20 BRBS 214; *Carnegie,* 19 BRBS 57.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge