

EARL P. THOMPSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARINE POWER & EQUIPMENT)	DATE ISSUED:
)	
and)	
)	
EAGLE PACIFIC INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Alexander Karst, Administrative Law Judge, United States Department of Labor.

James R. Walsh, Lynnwood, Washington, for claimant.

Richard M. Sagle (Williams, Kastner & Gibbs), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (90-LHC-2873) of Administrative Law Judge Alexander Karst 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. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On June 28, 1988, claimant sustained an injury to his lower back while working for employer as an outside machinist. Employer voluntarily paid claimant temporary total disability benefits from the date of injury until November 1, 1989. *See* 33 U.S.C. §908(b). Claimant, who has not returned to work since the June 28, 1988, work injury, sought temporary disability compensation under the Act from the date of injury until October 26, 1990, and permanent partial disability compensation thereafter.

The administrative law judge denied the claim, finding that claimant failed to establish a *prima facie* case of disability.¹ Crediting the testimony of Drs. Burns and Green that claimant's physical complaints were inappropriate and that claimant may have been attempting to manipulate the results of his tests, the administrative law judge found that claimant had no permanent impairment and was capable of performing his pre-injury work since September 7, 1989, the date Dr. Green indicated that maximum medical improvement had been achieved. In denying the claim, the administrative law judge rejected claimant's testimony that he was basically incapable of doing "anything" based on a surveillance video which showed him performing strenuous activities. He also discredited the opinion of Dr. Corrigan, claimant's treating physician, that claimant was unable to return to work, because it had been based largely upon subjective information provided to him by the claimant. The administrative law judge determined that as employer had voluntarily paid claimant compensation at the correct rate beyond September 7, 1989, claimant was not entitled to additional benefits under the Act.

Claimant appeals the administrative law judge's denial of additional compensation, submitting his post-trial brief with minor alterations as his Petition For Review. Employer responds, urging affirmance. Employer argues that claimant's post-hearing brief fails to identify any specific error of law or fact made by the administrative law judge, and that, in any event, the administrative law judge's Decision and Order is supported by substantial evidence.

The 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 and demonstrate why substantial evidence does not support the result reached.

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).

We agree with employer that claimant has failed to meet these threshold requirements in the

¹To establish a *prima facie* case of disability, claimant must show that he cannot return to his regular or usual employment due to a work-related injury. If claimant meets this burden, the burden shifts to employer to demonstrate the availability of specific available job opportunities within the geographic area that claimant resides which claimant is capable of performing given his age, education, physical restrictions, and work experience. *Hairston v. Todd Shipyards Corp.*, 849 F.2d 1194, 21 BRBS 122 (CRT) (9th Cir. 1988); *Bumble Bee Seafoods v. Director, OWCP*, 629 F.2d 1327, 1329, 12 BRBS 660, 662 (9th Cir. 1980). *See also Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140, 145 (1992).

present case. In *Collins v. Oceanic Butler, Inc.*, 23 BRBS 227 (1990), the Board held that where the claimant submitted a petition for review which was identical to his post-hearing brief and which failed to either address the administrative law judge's decision or identify any error committed by the administrative law judge below, the requirements of the Act and the regulations have not been satisfied. The Board further indicated that, under such circumstances, because the claimant failed to raise a substantial issue for the Board to review, the decision below must be affirmed. While the brief filed by claimant in the current appeal is not identical to his post-hearing brief, the additions/changes made are of no consequence, as they do not address the administrative law judge's decision or raise any specific allegation of error for the Board to review. Accordingly, claimant's appellate brief in the current case, like that filed by the claimant in *Collins*, is insufficient to satisfy the requirements of the Act and the regulations. As claimant has failed to raise a substantial issue for the Board to review, consistent with *Collins*, the administrative law judge's decision denying benefits in the current case, is affirmed. *See also Carnegie*, 19 BRBS at 59.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge