

BRB No. 01-0750 BLA

ROY J. BENNETT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UPSHUR COAL CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS'	)	
PNEUMOCONIOSIS FUND	)	
	)	
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 - Denying Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Robert F. Cohen, Jr. (Cohen, Abate & Cohen, L.C.), Morgantown, West Virginia, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (00-BLA-0152) of Administrative Law Judge Michael P. Lesniak on a duplicate claim<sup>1</sup> filed pursuant to the

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<sup>1</sup> Claimant, Roy J. Bennett, filed his first application for benefits with the Social Security Administration on February 12, 1973. The claim was finally denied on March 10, 1981. Director's Exhibit 33. Subsequently, claimant filed a second application for benefits with the Department of Labor on June 24, 1994, which was finally denied on December 14, 1994. Director's Exhibit 34. Claimant did not pursue this claim further, but instead filed a

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).<sup>2</sup> Adjudicating this duplicate claim pursuant to 20 C.F.R. Part 718, the administrative law judge stated that the parties had entered into the following stipulations: that claimant established at least twenty-one years of qualifying coal mine employment; that claimant's work as a federal mine inspector did not constitute coal mine employment under the Act; that a material change in conditions was established pursuant to 20 C.F.R. §725.309(c), (d); that the existence of pneumoconiosis arising out of coal mine employment was established; and that claimant was totally disabled. Thus, having found that the parties stipulated to the existence of pneumoconiosis arising out of coal mine employment and total disability, the administrative law judge determined that claimant established a material change in conditions and found that the sole contested issue before him was causation, *i.e.*, whether claimant was totally disabled due to pneumoconiosis. Considering all the evidence of record, the administrative law judge credited the physicians' opinions that claimant was totally disabled due to heart disease and, therefore, found that claimant failed to establish that his total disability was due to pneumoconiosis. Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the blood gas studies of record and the medical opinion evidence, considered in conjunction with the exertional requirements of claimant's usual coal mine employment, establish total disability. Employer/carrier has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating that he will not participate in this appeal.

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third application for benefits on October 30, 1997, which is the subject of the appeal before us. Director's Exhibit 1.

<sup>2</sup> 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

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 the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

It is well established that a party challenging the administrative law judge's decision must demonstrate with some degree of specificity the manner in which substantial evidence precludes the denial of benefits or the way in which the administrative law judge's decision is contrary to law. *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-49 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Because claimant argues only that the evidence establishes total disability, which was already stipulated to by the parties, see *Richardson v. Director, OWCP*, 94 F.3d 164, 167, 21 BLR 2-373, 2-379 (4th Cir. 1996); *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 n.3 (1992); *Nippes v. Florence Mining Co.*, 12 BLR 1-108, 1-109 (1985), and fails to state with specificity how the administrative law judge's determination on causation is contrary to law and has not otherwise raised any allegations of error regarding causation, he has failed to provide a basis upon which the Board can review the administrative law judge's findings. We, therefore, affirm the administrative law judge's finding that claimant failed to establish total disability due to pneumoconiosis, an essential element of entitlement. 20 C.F.R. §718.204(c).

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge