BRB No. 04-0675 BLA

PAUL EMILIANI, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED: 03/17/2005
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Harry T. Coleman, Carbondale, Pennsylvania, for claimant.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2003-BLA-6279) of Administrative Law Judge Robert D. Kaplan denying benefits 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 Act). The administrative law judge credited claimant with 10.92 years of qualifying coal mine employment, as stipulated by the parties and supported by the record, and adjudicated this claim, filed on September 14, 2002, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found the evidence of record insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's finding that the weight of the evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-1 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Claimant challenges the administrative law judge's finding that the weight of the evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a), arguing that the administrative law judge failed to explain why the x-ray evidence and the medical opinion evidence were in equipoise. The Director correctly notes, however, that claimant has failed to raise any other issues for the Board to consider. Specifically, claimant has not challenged the administrative law judge's finding that the weight of the evidence was insufficient to establish total respiratory disability at Section 718.204(b)(2)(i)-(iv), an essential element of entitlement pursuant to 20 C.F.R. Part 718. *See Anderson*, 12 BLR 1-111.

The Board is not required to undertake a de novo adjudication of the claim; to do so would upset the carefully allocated division of power between the administrative law judge as trier-of-fact, and the Board as a review tribunal. See 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Because claimant has not identified any specific legal or factual errors in the administrative law judge's weighing of the medical evidence pursuant to Section 718.204(b)(2)(i)-(iv), we affirm the administrative law judge's finding that total respiratory disability was not established thereunder, as unchallenged on appeal. *See Sarf*, 10 BLR 1-119; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Consequently, claimant is precluded from entitlement to benefits, and we need not address claimant's arguments regarding the issue of the existence of pneumoconiosis, as any error in the administrative law judge's weighing of the evidence at Section 718.202(a) is harmless. *See Anderson*, 12 BLR 1-111; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *Skrack*, 6 BLR at 1-711, 1-712.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge