

BRB No. 96-1475 BLA

LARRY WATSON)		
(Deceased))		
)		
Claimant-Petitioner)		
)		
v.)		
)		
WHITAKER COAL CORPORATION)		
)	DATE	ISSUED:
Employer-Respondent)		
)		
DIRECTOR, OFFICE OF WORKERS')		
COMPENSATION PROGRAMS, UNITED)		
STATES DEPARTMENT OF LABOR)		
)		
Party-In-Interest)	DECISION and ORDER	

Appeal of the Decision and Order of J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (95-BLA-1500) of Administrative Law Judge J. Michael O'Neill 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 found that the record established at least sixteen years of qualifying coal mine employment, but the evidence failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On

¹Claimant is Larry Watson, the miner, who filed a claim for benefits on June 28, 1994. Director's Exhibit 1. Claimant died on September 6, 1995 and Lavern Watson, his widow, is pursuing the claim on his behalf. Claimant's Exhibit 2.

appeal, claimant contends that the administrative law judge erred in finding only sixteen years of qualifying coal mine employment and in finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and total respiratory disability pursuant to Section 718.204(c)(4). Employer responds urging affirmance of the Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate.²

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 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Strike v. Director, OWCP*, 817 F.2d 395, 10 BLR 2-45 (7th Cir. 1987); *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Baumgartner v. Director, OWCP*, 9 BLR 1-65 (1986); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Failure to prove any of these requisite elements compels a denial of benefits. See *Anderson, supra*; *Baumgartner, supra*; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

²We affirm the administrative law judge's findings pursuant to Sections 718.202(a)(2)- (4) and 718.204(c)(1)-(3) as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein.³ We reject claimant's contentions that the administrative law judge erred in weighing the x-ray evidence pursuant to Section 718.202(a)(1). Claimant's Brief at 4-5. The administrative law judge considered the x-ray evidence of record which consists of seven interpretations of four x-rays, only two of which are positive for the existence of pneumoconiosis. Decision and Order at 4; Director's Exhibits 16-19; Claimant's Exhibit 1; Employer's Exhibits 1, 2. The administrative law judge permissibly accorded greatest weight to the two negative interpretations of Dr. Sargent, the only B-reader and Board-certified radiologist to submit an interpretation, on the basis of his superior qualifications and found that the preponderance of the x-ray evidence was negative for the existence of pneumoconiosis. Decision and Order at 4; Director's Exhibit 16, 17; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Thus, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).⁴

Next, claimant generally contends that the administrative law judge erred in finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c)(4). Claimant's Brief at 5-6. The Board is not authorized to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of authority between the administrative law judge as the trier-of-fact, and the Board as a reviewing tribunal. See 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). The Board's

³Claimant contends that the administrative law judge erred in finding only sixteen years of qualifying coal mine employment. Claimant's Brief at 2-4. However, because there is no presumption under 20 C.F.R. Part 718 that will benefit claimant if he has more than sixteen years of qualifying coal mine employment, any error by the administrative law judge is harmless. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

⁴Claimant also contends that the administrative law judge erred in failing to apply the true doubt rule. Contrary to claimant's contention, the United States Supreme Court has held, in *Director, OWCP v. Greenwich Collieries* [Ondecko], 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993), that application of the true doubt rule violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), as it relieves claimants of their burden of proof in establishing entitlement to benefits. Thus, we reject claimant's contention.

circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order with specificity and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. See 20 C.F.R. §802.211(b); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *Sarf, supra*. Unless the party identifies errors and briefs its allegations in terms of the relevant law and evidence, the Board has no basis upon which to review the decision. See *Sarf, supra*; *Fish, supra*.

In the instant claim, other than generally asserting that the record contains a medical opinion from Dr. Baker which states that claimant should have no further exposure to coal dust due to his pneumoconiosis, Claimant's Exhibit 1, claimant fails to make any allegations of error in the administrative law judge's finding pursuant to Section 718.204(c)(4). As claimant's counsel has failed to adequately raise or brief any issues arising from the administrative law judge's finding pursuant to Section 718.204(c)(4), the Board has no basis upon which to review the finding. Thus, we affirm the administrative law judge's finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c)(4) and the denial of benefits.⁵

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

⁵We note that the administrative law judge's findings that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c)(4) is supported by substantial evidence. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983).

JAMES F. BROWN
Administrative Appeals Judge