BRB No. 03-0422 BLA

CHESTER PATRICK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KEM COAL COMPNAY	)	DATE ISSUED: 12/23/2003
	)	
and	)	
	)	
TRANSCO ENERGY COMPANY	)	
	)	
Employer/Carrier-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Bobby D. Williams, Hindman, Kentucky, for claimant.

Lois A. Kitts (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (01-BLA-1059) of Administrative Law Judge Daniel J. Roketenetz rendered 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).[1] In this request for modification, the

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became

administrative law judge considered the newly submitted evidence along with earlier submitted evidence and found it insufficient to establish the existence of pneumoconiosis, total disability, or total disability due to pneumoconiosis. 20 C.F.R. §§718.202, 718.204. The administrative law judge, therefore, found it insufficient to establish a basis for modification. 20 C.F.R. §725.310 (2000). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in denying benefits because he presented evidence showing the existence of pneumoconiosis and disability. Employer responds, urging affirmance of the administrative law judge's Decision and Order denying benefits. The Director, Office of Workers' Compensation Programs, is not participating in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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 pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP* , 9 BLR 1-1 (1986)(*en banc*).

Initially, we note that claimant's assertion that he is precluded from working in dusty conditions does not establish total disability. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988). Nor, contrary to claimant's assertion, does claimant's testimony that his physical limitations preclude him from returning to coal mine employment, establish total respiratory disability. 20 C.F.R. §718.204; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987); *Centak v. Director, OWCP*, 6 BLR 1-1072, 1-1074 (1984). Claimant makes no other specific allegations of error by the administrative law judge.

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 the trier-of-fact, and the Board, as a review tribunal. *See* 20 C.F.R.

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effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

§802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120 (1987). As we have emphasized in previous cases, the Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order and demonstrate why substantial evidence does not support the result reached or why the Decision and Order is contrary to law. 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Sarf*, 10 BLR 1-119; *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). 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. *Id*.

In the instant case, other than generally asserting that the medical evidence is sufficient to establish entitlement, claimant has not challenged the rationale provided by the administrative law judge for finding the evidence of record insufficient to establish the existence of pneumoconiosis, total disability, or total disability due to pneumoconiosis. Claimant has failed to identify any errors made by the administrative law judge in the evaluation of the evidence and applicable law. Thus, the Board has no basis upon which to review the decision of the administrative law judge. Consequently, we affirm the finding of the administrative law judge that the evidence of record failed to establish the elements of entitlement. 20 C.F.R. §§718.202, 718.204. We, therefore, affirm the denial of benefits as it is supported by substantial evidence and is in accordance with law

Accordingly, the Decision and Order – Denial of 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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PETER A. GABAUER, Jr.
Administrative Appeals Judge