

KENNETH FLINT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NORTH FLORIDA SHIPYARDS	)	DATE ISSUED:
	)	
and	)	
	)	
ARM INSURANCE SERVICES	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Douglas E. Daze, Jacksonville, Florida, for claimant.

Mary Nelson Morgan (Cole, Stone, Stoudemire, Morgan & Dore, P.A.), Jacksonville, Florida, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (92-LHC-1592, 94-LHC-3198, 97-LHC-1997) of Administrative Law Judge Pamela Lakes Wood 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant worked for employer as an electrician from 1975 to 1991. Claimant injured his left knee during the course of his employment for employer in 1987. Claimant has undergone multiple surgeries for his left knee condition, culminating in the total replacement of his left knee joint on August 21, 1997. Claimant also underwent major heart surgery after his discharge from employer in 1991, and he began experiencing breathing difficulties, which he attributed to asbestos exposure during the course of his employment for employer. Claimant filed a claim against employer in 1993 for a work-related hearing loss. Employer voluntarily compensated claimant for various periods of temporary total disability related to his left knee injury, 33 U.S.C. §908(b), and for permanent partial disability resulting from claimant's left knee impairment and work-related hearing loss, 33 U.S.C. §§908(c)(2),(13),(19). Claimant asserted he sustained a compensable injury from work-related asbestos exposure, and he sought benefits under the Act for permanent total disability allegedly caused by his work-related left knee injury, hearing loss, and asbestos exposure. See 33 U.S.C. §908(a).

In her decision, the administrative law judge found, based on the evidence as a whole, that claimant does not have any disease from asbestos exposure. The administrative law judge next found that claimant is not permanently totally disabled due to the combination of his work-related knee injury and hearing loss. Specifically, the administrative law judge found that, while claimant is unable to return to his usual employment as an electrician, employer established the availability of suitable alternate employment. Finally, the administrative law judge found that claimant failed to show he had made a diligent search for suitable alternate employment. Accordingly, the administrative law judge concluded that claimant is not entitled to compensation for permanent total disability, and that claimant has been fully compensated for his scheduled permanent partial disabilities.

On appeal, claimant challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.

Claimant alleges that he is totally incapacitated for any work, and that therefore the administrative law judge erred in denying him compensation for total disability. Claimant asserts that he is unable to perform the duties of the jobs identified in employer's labor market survey and that employer did not obtain any actual job offers for claimant.

Section 802.211(b) of the Board's regulations states, in pertinent part:

Each petition for review shall be accompanied by a supporting brief . . . which:  
Specifically states the issues to be considered by the Board; presents . . . an

argument with respect to each issue presented with references [to the record]; a short conclusion stating the precise result the petitioner seeks on each issue and any authorities upon which the petition relies to support such proposed result.

20 C.F.R. §802.211(b). The Board has stated previously that a brief filed by a party represented by counsel must address why the administrative law judge's decision is not supported by substantial evidence or in accordance with law. The brief must include a discussion of the relevant law and evidence. *Collins v. Oceanic Butler, Inc.*, 23 BRBS 227, 229 (1990); *Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 214, 218 (1988). “[M]ere assignment of error is not sufficient to invoke Board review.” *Carnegie v. C&P Telephone Co.*, 19 BRBS 57, 58-59 (1986).

In his brief, claimant generally asserts that he is unable to perform the jobs identified in employer's labor market survey. Claimant, however, fails to allege any specific error in the administrative law judge's crediting of the labor market survey, or in her reasoning that claimant is capable of performing 13 of the 16 positions identified therein based on the opinion of Dr. Rukab, who performed the knee replacement surgery, and opined that the jobs are within claimant's capabilities. Claimant's mere citation to general propositions of law and to evidence favorable to his claim is insufficient to invoke the Board's review. *Plappert v. Marine Corps Exchange*, 31 BRBS 109 (1997), *aff'g on recon. en banc* 31 BRBS 19 (1997); *Carnegie*, 19 BRBS at 59; 20 C.F.R. §802.211(b). As claimant has not raised any substantial issues for the Board to review, the decision below must be affirmed.<sup>1</sup> *Collins*, 23 BRBS at 229; *Carnegie*, 19 BRBS at 59.

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<sup>1</sup>We note that employer is not obligated to obtain an actual job offer for claimant in order to establish the availability of suitable alternate employment. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5<sup>th</sup> Cir. 1981).

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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J. DAVITT McATEER  
Administrative Appeals Judge