

BRB No. 88-3859 BLA

JAMES BONNER )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Respondent ) DECISION and ORDER

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

Lynne G. Bressi (Law Offices of Charles A. Bressi, Jr.), Pottsville,  
Pennsylvania, for claimant.

Irene B. Wozny (Robert P. Davis, Solicitor of Labor; Donald S. Shire,  
Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard  
A. Seid and Jeffrey J. Bernstein, Counsel for Administrative Litigation and Legal  
Advice), Washington, D.C., for the Director, Office of Workers' Compensation  
Programs, the United States Department of Labor.

Before: BROWN and DOLDER, Administrative Appeals Judges, and  
LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (87-BLA-3156) of  
Administrative Law Judge Robert D. Kaplan 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

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

seq. (the Act). The administrative law judge determined that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309(d), and considered the merits of the duplicate claim under the regulations at 20 C.F.R. Part 718. The administrative law judge credited claimant with eight years and nine months of qualifying coal mine employment as stipulated to by the parties, and found that claimant established the existence of pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202(a)(1), (a)(4), and 718.203. The administrative law judge further found, however, that claimant failed to establish total disability under 20 C.F.R. §718.204(c), and accordingly denied benefits. Claimant appeals, contending that the administrative law judge erroneously credited the invalidation of three pulmonary function studies by reviewing physicians over the validation of the administering physician under 20 C.F.R. §718.204(c)(1), and erroneously discredited Dr. Kraynak's diagnosis of total disability under 20 C.F.R. §718.204(c)(4). The Director, Office of Workers' Compensation Programs,

responds, urging affirmance.<sup>1</sup>

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. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

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<sup>1</sup> The administrative law judge's findings under 20 C.F.R. §§718.202, 718.203, and his finding that the evidence was insufficient to establish total disability under 20 C.F.R. §718.204(c)(2) and (c)(3) are affirmed 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 Decision and Order of the administrative law judge is supported by substantial evidence, and contains no reversible error. Contrary to claimant's arguments, the administrative law judge acted within his discretion in relying on the pulmonary function study invalidations of Drs. Cander and Levinson over the validation of Dr. Kraynak, the administering physician, based on the reviewing physicians' superior credentials. See Warman v. Pittsburgh & Midway Coal Mining Co., 839 F.2d 257, 11 BLR 2-62 (6th Cir. 1988); Street v. Consolidation Coal Co., 7 BLR 1-65 (1984). Moreover, although noting Dr. Kraynak's status as treating physician, Decision and Order at 8, the administrative law judge permissibly discredited his diagnosis of total disability under Section 718.204(c)(4) because the physician based his conclusions in part on unreliable documentation.<sup>2</sup> See Hutchens v. Director, OWCP, 8 BLR 1-16

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<sup>2</sup> Claimant contends that the administrative law judge improperly rejected Dr. Kraynak's opinion after erroneously determining that it was based solely on invalid ventilatory studies. We disagree. See Decision and Order at 7, 8, 10, 12, 13. Rather, the administrative law judge permissibly credited the contrary probative evidence over Dr. Kraynak's opinion. See Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); see also Lucostic v. United States Steel Corp., 8 BLR 1-46 (1985). Although claimant argues that the administrative law judge failed to weigh claimant's testimony, any error is harmless inasmuch as the administrative law judge found the medical opinions insufficient to support a finding of total disability. See Fields, supra; Arnoni v. Director, OWCP, 6 BLR 1-423 (1983). Finally, claimant's assertion that the administrative law judge required claimant to prove disability by clear and convincing evidence rather than by a preponderance of the evidence is without foundation, as the administrative law judge stated and applied the proper standard. Decision and Order at 11.

(1985); Cooper v. Director, OWCP, 7 BLR 1-842 (1985). Claimant's assignment of error goes only to the weight to be assigned the evidence, which is the province of the administrative law judge. As the trier-of-fact, the administrative law judge need not accept the opinion of any particular medical expert, even where it is uncontradicted by other medical opinions, but must weigh the evidence and draw his own conclusions therefrom. Todd Shipyards Corp. v. Donovan, 300 F.2d 741 (5th Cir. 1962); Knizer v. Bethlehem Mines Corp., 8 BLR 1-196 (1985). The Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's Decision and Order Denying Benefits as rational and supported by substantial evidence.

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

SO ORDERED.

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge