BRB No. 04-0734 BLA

B.F. CAUDILL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 04/29/2005
	)	
CUMBERLAND RIVER COAL COMPANY	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (2000-BLA-321) of Administrative Law Judge Rudolf L. Jansen 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). This case has been before the Board previously. The lengthy history of this case is set forth in *Caudill v. Cumberland River Coal Co.*, BRB No. 00-1185 BLA (Sep. 26, 2001)(unpub.), wherein the Board vacated the administrative law judge's Order Denying Employer Motions and Decision on Motion for Reconsideration and Order of Dismissal and remanded the case for him to consider all of the relevant evidence and apply the standard set forth in *Selak v. Wyoming Pocahontas Land Co.*, 21 BLR 1-173 (1999)(*en banc*) and *Stiltner v. Wellmore Coal Corp.*, 22 BLR 1-37 (2000)(*en banc*), in

ruling on employer's motions to compel claimant to submit to a physical examination and to respond to discovery requests in connection with employer's request for modification, and to hold a hearing. Employer filed a timely motion for reconsideration, which the Board granted in part on April 18, 2001. On Reconsideration *En Banc*, the Board clarified the standard set forth in *Selak* and extended in *Stiltner*. Specifically, the Board stated that the issue is whether employer has raised a credible issue pertaining to the original adjudication of disability. *Caudill v. Cumberland River Coal Co.*, BRB No. 00-1185 BLA (Apr. 18, 2001)(unpub.).

On remand, the administrative law judge held a formal hearing at which claimant testified and new evidence proffered by employer, consisting of x-ray readings and medical record reviews, was admitted. The administrative law judge credited claimant with twenty-seven years of coal mine employment, and found that the record demonstrated a smoking history of one and one-half packs of cigarettes per day for forty years. After examining the evidence of record, the administrative law judge found that the evidence, both old and new, was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(4) and 718.203(b). The administrative law judge further found that the evidence established total respiratory disability pursuant to Section 718.204(b)(2)(iv) and total disability due to pneumoconiosis pursuant to Section 718.204(c). The administrative law judge thus found that employer did not demonstrate a mistake in a determination of fact and that modification was not warranted. The administrative law judge further found that since employer had not raised a credible issue pertaining to the validity of the original adjudication, employer had not shown that its request to compel claimant's release of his medical records was reasonable. Thus, the administrative law judge concluded that reopening the record would not render justice under the Act. Accordingly, the administrative law judge denied employer's request for modification of the award of benefits.

On appeal, employer contends that the administrative law judge erred in denying its modification request. Claimant has not submitted a response in this appeal. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.

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

Modification may be based upon a finding of a mistake in a determination of fact

pursuant to 20 C.F.R. §725.310 (2000).[1] In reviewing the record as a whole on modification, an administrative law judge is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); *see also Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994). Moreover, the Board has held that employer, pursuant to a request for modification, does not have an absolute right to compel claimant to respond to discovery requests or other requests for medical evidence. *Stiltner*, 22 BLR at 1-40-42.

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.

Employer challenges the administrative law judge's refusal to reopen the record on modification and refusal to compel claimant to authorize access to his recent medical records. The Board instructed the administrative law judge, on remand, to consider all of the relevant evidence to determine whether employer's request to have claimant re-examined is reasonable under the circumstances upon consideration of whether it raised a credible issue pertaining to the validity of the original adjudication to decide if an order compelling claimant to submit to examinations or tests would be in the interest of justice. In exercising his discretion in determining whether to reopen the record, the administrative law judge noted that since he had not found a mistake in a determination of fact in the previous adjudications in this case, "it would not render justice under the Act to reopen the record as there is no previous inaccuracy to correct." Decision and Order on Remand at 20. Moreover, the administrative law judge noted that although claimant testified about his recent medical history since the previous hearing, claimant's testimony did not establish that he had additional chest x-rays or that he underwent pulmonary function or arterial blood gas studies. Decision and Order at 21; Hearing Transcript at 43-54. The administrative law judge thus reasonably concluded that there was no uncertainty regarding the validity of the original adjudication and that there was no persuasive reason to compel claimant to respond to employer's discovery requests and to reopen the record. Based on his conclusions, the administrative law judge determined, within a reasonable exercise of his discretion, that reopening the record would not render justice under the Act. Decision and Order on Remand at 21. *See Kinlaw v. Stevens Shipping and Terminal Co.*, 33 BRBS 68, 72 (1999); *Branham v. BethEnergy Mines, Inc.*, 21 BLR 1-79, 1-82-84 (1998)(McGranery, J., dissenting). Although employer argues that the administrative law judge arbitrarily refused to reopen the

[1] Although 20 C.F.R. §725.310 has been revised, these revisions apply only to claims filed after January 19, 2001, and thus do not apply to this case.

record, it has not shown that he failed to adhere to the Board's remand instructions or abused his discretion in this case. *Selak*, 21 BLR at 1-178; *Stiltner*, 21 BLR at 1-41. Consequently, we affirm the administrative law judge's determination not to reopen the record for claimant to respond to employer's discovery requests.

Employer also contends that the administrative law judge erred in finding that claimant established the existence of pneumoconiosis, total respiratory disability, and total disability due to pneumoconiosis pursuant to Sections 718.202(a)(4), 718.204(b)(2)(iv), and 718.204(c). Employer asserts that the administrative law judge improperly credited the medical opinions of Drs. Baker, Chaney, and Sundaram, while improperly discounting the contrary opinions of Drs. Fino, Castle, Branscomb, Barrett, and Broudy. Employer argues that the opinions of Drs. Baker, Chaney, and Sundaram are not well-reasoned and documented and that the administrative law judge failed to adequately explain his reasons for crediting these opinions over the contrary opinions, as required by the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2).

The administrative law judge found that the opinions of Drs. Baker, Chaney, and Sundaram, who diagnosed pneumoconiosis, were well documented and reasoned and were supported by the lesser-weighted opinion of Dr. Wright. Decision and Order on Remand at 14. Furthermore, the administrative law judge found that the opinions of Drs. Branscomb, Broudy, Castle, and Fino were poorly documented and reasoned. *Id.* The administrative law judge thus found that the opinions of Drs. Baker, Chaney, and Sundaram outweighed those of Drs. Branscomb, Broudy, Castle, and Fino and concluded that the record supported a finding of the existence of pneumoconiosis under Section 718.202(a)(4).

Contrary to employer's assertion, the administrative law judge, within his discretion as fact-finder, reasonably determined that the opinions of Drs. Chaney, Baker, and Sundaram were entitled to full weight upon finding these opinions well-reasoned and well-documented. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); Decision and Order on Remand at 14. Although employer asserts otherwise, the administrative law judge reasonably determined that Drs. Chaney, Baker, and Sundaram based their diagnoses and conclusions on detailed work, smoking, and medical histories, claimant's symptoms, and a review of objective medical data, *i.e.*, pulmonary function studies and arterial blood gas studies. Decision and Order on Remand 7-9. Moreover, the administrative law judge considered the physicians' qualifications in weighing the various opinions. *Williams*, 338 F.3d 501, 22 BLR 2-625. Consequently, the administrative law judge acted within his discretion in finding that the opinions of Drs. Baker, Chaney, and Sundaram were more persuasive and outweighed those of Drs. Branscomb, Broudy, Castle, and Fino, whose opinions were found either conclusory, vague, or equivocal. Decision and Order on Remand at 12-14, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tackett v.*

Cargo Mining Co., 12 BLR 1-11 (1988)(*en banc*). Thus, we reject employer's assertion that the administrative law judge erred in finding that the opinions of Drs. Baker, Chaney, and Sundaram were more persuasive and outweighed those of Drs. Branscomb, Broudy, Castle, and Fino and we affirm the administrative law judge's finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

In finding total disability established, the administrative law judge permissibly found Dr. Chaney's opinion to be the most persuasive on the issue because it was well documented and reasoned. Decision and Order on Remand at 17; *see Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 103 (1983). In addition, the administrative law judge found that Dr. Chaney's testimony revealed a better understanding of the exertional requirements of claimant's former coal mine employment than was reported by the other physicians of record who considered them. *Id.*, *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000). Moreover, the administrative law judge noted that Dr. Chaney's opinion was supported by the opinions of Drs. Baker, Sundaram, and Wright and he reasonably concluded that these opinions outweighed those of Drs. Branscomb, Fino, Broudy, and Castle. In weighing the evidence together, the administrative law judge acknowledged that the record contains no qualifying pulmonary function studies or blood gas studies, but rationally exercised his discretion in according "controlling weight" to the opinion of Dr. Chaney to find total disability established under Section 718.204(b)(2)(iv), noting that it was a "comprehensive opinion … predicated on all of the evidence as a whole." Decision and Order on Remand at 17-18; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Consequently, we affirm the administrative law judge's conclusion that the record supports a finding of total disability under Section 718.204(b)(2)(iv).

Likewise, we also reject employer's contention that the administrative law judge erred in finding that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(c). The administrative law judge considered the entirety of the medical opinion evidence and acted within his discretion in concluding that claimant's totally disabling respiratory impairment was due, at least in part, to pneumoconiosis. In weighing the medical opinions of record, the administrative law judge permissibly found that the opinions of Drs. Baker, Chaney, Wright, and Sundaram were more persuasive and outweighed those of Drs. Branscomb, Broudy, Castle, and Fino regarding the contribution of claimant's coal mine employment to his respiratory impairment and rationally found this evidence sufficient to establish total disability due to pneumoconiosis. *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); Decision and Order on Remand at 19. This finding is affirmed as it is supported by substantial evidence. Consequently, we affirm the administrative law judge's finding that the evidence was insufficient to establish a mistake of fact in the prior award pursuant to Section 725.310, and affirm the administrative law judge's denial of employer's request for modification pursuant to 20 C.F.R. Part 718. *See Worrell*, 27 F.3d at 230, 18 BLR 2-296.

Claimant's counsel has submitted a complete, itemized statement requesting a fee for services performed in the prior appeal pursuant to 20 C.F.R. §802.203. Counsel requests a fee of $1,900.00 for 9.5 hours of legal services at an hourly rate of $200.00. No objections to the fee petition have been received. The Board finds the requested fee to be reasonable in light of the services performed and approves a fee of $1,900.00, to be paid directly to claimant's counsel by employer. 33 U.S.C. § 928, as incorporated by 30 U.S.C. § 932(a); 20 C.F.R. § 802.203.

Accordingly, the Decision and Order on Remand of the administrative law judge is affirmed and claimant's counsel is awarded a fee of $1,900.00.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge