

BRB No. 99-1140 BLA

LESTER WOLFGANG )  
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 Claimant-Petitioner ) )  
 )  
 v. )  
 )  
 KOCHER COAL COMPANY ) DATE ISSUED: \_\_\_\_\_  
 )  
 Employer-Respondent )  
 )  
 and )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, )  
 UNITED STATES DEPARTMENT )  
 OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits Upon Modification of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits Upon Modification (99-BLA-0011) of Administrative Law Judge Ainsworth H. Brown denying benefits on a duplicate claim<sup>1</sup> filed pursuant to the provisions of Title IV of the Federal Coal Mine

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<sup>1</sup>The instant claim was filed on March 28, 1986. Director's Exhibit 2.

Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found that claimant failed to establish that his coal mine employment-related pneumoconiosis is a substantial contributor to his total disability under *Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989). Accordingly, the administrative law judge denied claimant's request for modification of the prior denial under 20 C.F.R. §725.310 and the claim.<sup>2</sup>

On appeal, claimant contends that the administrative law judge mischaracterized the record and committed reversible error in weighing the relevant medical opinions at 20 C.F.R. §718.204(b). Claimant asserts that the administrative law judge's decision does not comport with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). Employer responds, and seeks affirmance of the decision below. The Director, Office of Workers' Compensation Programs has not filed a brief on 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 this Board and may not be disturbed. 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).

Claimant contends that the administrative law judge mischaracterized the record and thereby committed reversible error in his consideration of the relevant medical opinions under Section 718.204(b). Claimant's contention has merit. The administrative law judge erroneously identified Dr. Raymond Kraynak as the author of the medical opinion dated March 31, 1999. Decision and Order at 5. The author of this opinion is Dr. Matthew Kraynak. Claimant's Exhibit 8. Moreover, a review of the record reveals that the administrative law judge did not weigh Dr. Raymond Kraynak's January 12, 1998 report

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Claimant's initial claim, filed on July 15, 1983, was abandoned. Director's Exhibits 1, 36.

<sup>2</sup>We note that in the prior denial, claimant established that he is totally disabled under 20 C.F.R. §718.204(c) which he had previously failed to establish. Director's Exhibit 144.

contained at Director's Exhibit 147. Dr. Raymond Kraynak found that claimant was totally and permanently disabled due to black lung disease. While the administrative law judge purports to weigh Dr. Raymond Kraynak's opinion, see Decision and Order at 7, the administrative law judge's description of the report's content and of the studies relied upon by the physician, do not match the actual report or testimony rendered by Dr. Raymond Kraynak. Director's Exhibit 147, Claimant's Exhibit 5 at 8-10.

Claimant further argues that the record refutes the administrative law judge's findings that the reports rendered by Drs. Matthew Kraynak and John Simelaro are "conclusory and unsupported by any objective evidence of record." Decision and Order at 6. Claimant's contention has merit. The record shows that Dr. Matthew Kraynak's opinion is based on physical examination, pulmonary function study, social and smoking histories, and a 20-year coal mine employment history. Claimant's Exhibits 3, 8. Moreover, Dr. Matthew Kraynak and Dr. Simelaro rendered consulting opinions in which they were directed to address one issue only, namely, the cause of total disability in light of the varying smoking histories reported in the record. Claimant's Exhibits 6,8. These consulting opinions are limited in their nature and are not *per se* conclusory as the administrative law judge finds.

Lastly, claimant contends that the administrative law judge's weighing of the evidence is, in certain parts, irrational or unintelligible. As claimant asserts, the administrative law judge used Dr. Dittman's opinion as a standard by which to weigh the evidence.<sup>3</sup> Specifically, in according Dr. Dittman's report determinative weight to find that claimant failed to meet his burden at Section 718.204(b), the administrative law judge found that Dr. Simelaro did not "address Dr. Dittman's rationale in a direct manner. Thus Dr. Dittman's reasoning remains effectively unrefuted as to its logic." Decision and Order at 6-7. The record shows, however, that Dr. Simelaro was not asked to review Dr. Dittman's

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<sup>3</sup>Dr. Dittman opined that claimant does not have coal workers' pneumoconiosis and that he is neither impaired nor disabled by coal workers' pneumoconiosis. Employer's Exhibit 1 at 4-5. In his consulting report, having been asked to assume that claimant has pneumoconiosis and is totally disabled, Dr. Dittman opined that claimant's obstructive lung disease would be secondary to smoking, or to bronchial asthma, emphysema or some combination thereof unrelated to smoking. *Id.* at 17.

opinion. Thus, the administrative law judge's discrediting of Dr. Simelaro's report on this basis cannot stand. See APA, *supra*. Moreover, the administrative law judge did not provide a rationale for his statement that Dr. Dittman's logic is "unrefuted as to its logic," and no rationale therefor is discernible from a review of his findings. *Id.*

Based on the foregoing errors on the part of the administrative law judge, we hold that the administrative law judge's weighing of the evidence at Section 718.204(b) contains reversible error and does not comport with the requirements of the APA, *supra*.<sup>4</sup> We, therefore, vacate the administrative law judge's finding at Section 718.204(b) and remand the case for further consideration of the evidence relevant to claimant's burden under *Bonessa, supra*. On remand, the administrative law judge must make complete findings in accordance with the APA, *supra*, in adjudicating the instant request for modification, *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995).

Accordingly, the administrative law judge's Decision and Order Denying Benefits Upon Modification is vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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MALCOLM D. NELSON, Acting  
Administrative Appeals Judge

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<sup>4</sup>We do not address claimant's assertion that Dr. Dittman's opinion is not credible while those of Drs. Matthew Kraynak, Raymond Kraynak, and John Simelaro are credible and determinative of the disability causation issue. The Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).