

BRB No. 99-1195 BLA

CHAD PENIX	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
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 - Denying Benefits of Stuart A. Levin, Administrative Law Judge, United States Department of Labor.

Chad Penix, Moneta, Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order on Remand (97-BLA-0792) of Administrative Law Judge Stuart A. Levin denying benefits 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.<sup>1</sup> On remand, the administrative law judge reconsidered the medical

---

<sup>1</sup>In its previous decision in this case, the Board affirmed the administrative law judge's findings that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) - (3) and total disability pursuant to 20 C.F.R. §718.204(c)(1) - (4), and remanded the case for the administrative law judge to consider Dr. Kottapalli's January

opinion evidence and determined that claimant did not establish the existence of pneumoconiosis and thus, did not establish a material change in conditions pursuant to 20 C.F.R. §725.309. Accordingly, benefits were denied. On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *See Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On remand, the administrative law judge found that Drs. Vasudevan, Castle, Hippensteel and Keeley agreed that claimant did not suffer from pneumoconiosis or any respiratory disease caused by dust exposure, and that these opinions were based on physical examination, x-ray, pulmonary function and blood gas studies, symptoms and medical, smoking and employment histories, as well as a review of the medical evidence accumulated until each report was written. Decision and Order on Remand at 3. The administrative law judge also found that all four physicians are board-certified in internal medicine and pulmonary disease. *Id.* Then, considering Dr. Kottapalli's opinion, the administrative law judge found that the physician diagnosed pneumoconiosis based on physical examination, clinical history, laboratory results, x-ray, employment history and symptoms. *Id.* The administrative law judge noted that neither the x-ray nor the laboratory results were included with Dr. Kottapalli's medical report. The administrative law judge also found that the physician's letterhead indicated that he is an internist and is the Medical Director for the Black Lung Clinic located in Man, West Virginia. The administrative law judge assigned

---

29, 1997 medical report with the other medical opinion evidence at 20 C.F.R. §718.202(a)(4). The Board further instructed the administrative law judge to consider the evidence in its entirety if, on remand, the administrative law judge determined that a material change in conditions was established pursuant to 20 C.F.R. §725.309. *Penix v. Consolidation Coal Co.*, BRB No. 98-0647 BLA (Feb. 2, 1999)(unpub.).

greater probative weight to the opinions of Drs. Keeley, Vasudevan, Castle and Hippensteel because their credentials are superior in the area of pulmonary disease, and concluded that the weight of the medical opinion evidence does not establish that claimant suffers from pneumoconiosis or a material change in conditions since the previous denial of benefits.

After consideration of the Decision and Order on Remand and the evidence of record, we conclude that the administrative law judge's findings are supported by substantial evidence and the Decision and Order on Remand contains no reversible error therein. In determining that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(4), the administrative law judge properly considered the relative qualifications of the physicians and rationally accorded greater weight to the opinions of the physicians with superior credentials. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). Consequently, as claimant has failed to establish the existence of pneumoconiosis,<sup>2</sup> we affirm the administrative law judge's finding that a material change in conditions pursuant to Section 725.309 has not been established, and affirm the denial of benefits. *See Lisa Lee Mines v. Director, OWCP*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

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

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

<sup>2</sup>Inasmuch as the administrative law judge permissibly determined that claimant did not establish the existence of pneumoconiosis by any of the methods set forth in 20 C.F.R. 718.202(a)(1) - (4), we need not remand the case for reconsideration pursuant to the decision of the United States Court of Appeals for the Fourth Circuit in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. May 2, 2000).

---

MALCOLM D. NELSON, Acting  
Administrative Appeals Judge