BRB No. 98-1530 BLA

EARL S. WOODSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	DATE ISSUED: 8/18/99
	)	
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 John C. Holmes, Administrative Law Judge, United States Department of Labor.

John Cline, Scarbro, West Virginia, for claimant.

Paul E. Frampton (Bowles Rice McDavid Graff & Love), Fairmont, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (95-BLA-2017) of Administrative Law Judge John C. Holmes awarding 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). The procedural history of this case is as follows: Claimant filed his application for benefits on April 2, 1992. Director's Exhibit 1. In the original Decision and Order, the administrative law judge found, and the parties stipulated to, thirty-four years of coal mine employment and that claimant suffered from a totally disabling

pulmonary impairment. Administrative Law Judge Decision and Order dated October 21, 1993; Decision and Order on Remand at 1, 3; Employer's Brief at 3. Considering entitlement pursuant to the provisions of 20 C.F.R. Part 718, the administrative law judge concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, benefits were denied. The Board affirmed this denial of benefits in *Woodson v. Peabody Coal Co.*, BRB No. 94-0312 BLA (December 22, 1994)(unpublished). Claimant subsequently requested modification, which was denied by the administrative law judge. Administrative Law Judge Decision and Order on Modification dated September 28, 1995. Claimant appealed and the Board vacated the administrative law judge's denial of modification and remanded the case for the administrative law judge to determine if claimant submitted evidence in a timely fashion, and if so, to admit the evidence and reconsider the modification request. *Woodson v. Peabody Coal Co.*, BRB No. 96-0915 BLA (April 18, 1997)(unpublished).

On remand, the administrative law judge concluded that the evidence was timely submitted and granted modification pursuant to 20 C.F.R. §725.310. Decision and Order on Remand at 3. The administrative law judge further found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b) and that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Decision and Order on Remand at 3-4. Accordingly, benefits were awarded beginning February 1, 1995, the month in which modification of the claim was filed. In the instant appeal, employer contends that the administrative law judge erred in finding a mistake of fact pursuant to Section 725.310, erred in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(4) and erred in finding that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Claimant responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond to this appeal.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and the conclusions of law are rational, supported by substantial evidence, and in accordance with the law. 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).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9

BLR 1-1 (1986) (*en banc*).

After consideration of the administrative law judge's Decision and Order on Remand, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error therein. Initially, employer's contention that the administrative law judge's Decision and Order on Remand fails to comport with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), is without merit.[1] The administrative law judge fully discussed the relevant evidence of record and his reasoning is readily ascertainable from his discussion of the evidence.

Employer further contends that the administrative law judge erred in granting modification based on a mistake of fact. Specifically, employer argues that the administrative law judge erroneously relied on Dr. Rasmussen's opinion as his diagnosis of pneumoconiosis had not changed and that it was not substantive evidence supporting a mistake of fact. We disagree. In the instant case, the administrative law judge found modification established based on the newly submitted evidence and upon further reflection on its effect on the record as a whole. Decision and Order on Remand at 3. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*), held that for modification, a claimant may simply allege that the ultimate fact was mistakenly decided and the administrative law judge may, if he so chooses, modify the final order on the claim as there is no need for a smoking-gun factual error, changed conditions or startling new evidence. *See Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993). As a result, based on the circumstances of the instant case, we conclude that the administrative law judge properly determined that claimant established modification pursuant to 20 C.F.R. §725.310. *See Jessee, supra*. Consequently, the

[1]The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record...." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

administrative law judge properly addressed the merits of the instant case.

With respect to the merits, employer contends that the administrative law judge erred in finding the presence of pneumoconiosis established pursuant to Section 718.202(a)(4) as the administrative law judge impermissibly accorded less weight to Dr. Zaldivar's opinion and greater weight to the opinion of Dr. Rasmussen. Employer argues that the administrative law judge selectively analyzed the medical opinion evidence when he accorded greater weight to the report of Dr. Rasmussen on the ground that the doctor's opinion was supported by the liberal interpretation of the Act. We do not find merit in employer's argument. Employer's contention constitutes a request that the Board reweigh the evidence, which is beyond the scope of the Board's powers. *See Anderson v. Valley Camp Coal Co.*, 12 BLR 1-111 (1988). In the instant case, the administrative law judge permissibly accorded less weight to the opinion of Dr. Zaldivar as he failed to address adequately the possibility of coal dust exposure contributing to claimant's respiratory disability. *See* Decision and Order at 3; *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995). Furthermore, his Decision and Order indicates that the administrative law judge found the fact that Dr. Rasmussen's report, in which he reviewed all the evidence of record, including negative x-rays, was well-documented and well-reasoned and that the report discussed pneumoconiosis as defined in 20 C.F.R. §718.201 were more important reasons for crediting this report over the report of Dr. Zaldivar. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Tanner v. Freeman United Coal Co.*, 10 BLR 1-85 (1987). Additionally, the administrative law judge permissibly found that Dr. Rasmussen's opinion was supported by the x-ray interpretations of Drs. Scott and Goodarzi, the latter of whom is a B reader, as well as the opinion of claimant's treating physician, Dr. Amjad. *See* Decision and Order on Remand at 3; *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Clark, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *King v. Cannelton Industries, Inc.*, 8 BLR 1-146 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Massey v. Eastern Associated Coal Corp.*, 7 BLR 1-37 (1984); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983). Since the administrative law judge articulated multiple valid reasons for accepting the report of Dr. Rasmussen, we affirm his decision to accord greater weight to this report and his finding of the existence of pneumoconiosis at Section 718.202(a)(4). *See* Decision and Order at 3-4; *Carpeta v. Mathies Coal Co.*, 7 BLR 1-1445 (1984).

Employer further asserts that the administrative law judge erred in finding that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b) in that he failed to accord appropriate weight to Dr. Zaldivar's opinion. Employer contends that Dr. Zaldivar's opinion is entitled to greater weight in light of his superior credentials. Although an administrative law judge may assign more weight to a physician's opinion based on his qualifications, the administrative law judge, contrary to employer's contention, is not

obligated to give greater weight to a physician's superior qualifications. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark, supra; Defore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Price v. Peabody Coal Co.*, 7 BLR 1-671 (1985). Employer further contends that the administrative law judge erred in rejecting Dr. Zaldivar's opinion as the physician did not diagnose pneumoconiosis. We disagree. As an administrative law judge may permissibly accord less weight to an opinion regarding causation where it is based on a faulty underlying premise regarding the presence or absence of pneumoconiosis, *Trujillo v. Kaiser Steel Corporation*, 8 BLR 1-472 (1986), we reject employer's contention. *See Hobbs, supra; Bobick v. Saginaw Mining Company*, 13 BLR 1-52 (1989). The administrative law judge is empowered to weigh the medical opinion evidence of record and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra*; *Anderson, supra*; *Worley, supra*. Consequently, we affirm the administrative law judge's finding that the medical opinions of record establish causation pursuant to Section 718.204(b) and further affirm the award of benefits.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge