BRB No. 97-0942 BLA

JOHN ZIOLKO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED:
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

Edward Waldman (Marvin Krislov, Deputy Solicitor for National Operations; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-0730) of Administrative Law Judge Paul H. Teitler 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). The administrative law judge credited claimant with 4.375 years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The Director, Office of Workers' Compensation Programs (the Director), stipulated to the existence of pneumoconiosis, and the administrative law judge found that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c). The administrative law judge also found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in calculating the length of claimant's coal mine employment. Claimant also contends

that the administrative law judge erred in finding the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(1), (c)(3) and (c)(4). The Director responds, urging affirmance of the administrative law judge's Decision and Order.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(1). We disagree. Of the three pulmonary function studies of record, two studies, dated March 6, 1996 and May 1, 1996, yielded qualifying[1] values, Director's Exhibits 20, 22; Claimant's Exhibits 1, 5, and one study, dated November 28, 1995, yielded non-qualifying values, Director's Exhibit 8. The administrative law judge properly discredited the March 6, 1996 and May 1, 1996 qualifying studies because they are invalidated by Drs. Levinson and Sahillioglu.[2] *See Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985)(2-1 opinion with Brown, J., dissenting). Thus, we reject claimant's assertions that the administrative law judge erred by discrediting the later qualifying studies, and by failing to provide an explanation for discrediting them.[3] Further, we reject claimant's argument that the administrative law judge erroneously accorded determinative weight to the opinions of Drs. Levinson and Sahillioglu, consulting physicians, who each questioned the validity of the pulmonary function studies administered by Dr. Kraynak. An administrative law judge is required to provide a rationale for preferring the opinion of a consulting physician over that of an administering physician. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Siegel*, supra. In the instant case, the administrative law judge properly noted that the credentials of Drs. Levinson and Sahillioglu are superior to those of Dr. Kraynak.[4] *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24

[1]A "qualifying" pulmonary function study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1).

[2]Dr. Sahillioglu opined that the pulmonary function study administered by Dr. Kraynak on March 6, 1996 is invalid. Director's Exhibit 20; Claimant's Exhibit 1. Further, Dr. Levinson opined that the pulmonary function study administered by Dr. Kraynak on May 1, 1996 is invalid. Director's Exhibit 22; Claimant's Exhibit 6.

[3]Claimant asserts that Dr. Sahillioglu failed to provide an adequate explanation for invalidating the March 6, 1996 pulmonary function study. Contrary to claimant's assertion, Dr. Sahillioglu listed "Variable FVC's and MVV" as his basis for invalidating this study. Director's Exhibit 20.

[4]The administrative law judge stated that Dr. Kraynak "is [B]oard-eligible in family

(1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).[5]

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medicine." Decision and Order at 6; Claimant's Exhibits 3, 13. The administrative law judge also stated that Dr. Sahillioglu "is [B]oard-eligible in internal and pulmonary medicine." *Id*.; Director's Exhibit 21. Further, the administrative law judge stated that Dr. Levinson "is [B]oard-certified in internal and pulmonary medicine." *Id.* at 7; Director's Exhibit 23.

[5]Claimant asserts that the administrative law judge failed to consider Dr. Kraynak's response to Dr. Sahillioglu's invalidation report. Contrary to claimant's assertion, the administrative law judge properly considered this opinion. Decision and Order at 7.

Additionally, claimant argues that the November 28, 1995 pulmonary function study does not comply with the quality standards at 20 C.F.R. §718.103 because no MVV maneuvers were performed and claimant's cooperation was not noted on the portions of the study that were completed. Contrary to claimant's argument, the November 28, 1995 pulmonary function study complies with the quality standards because it records the FEV1 and FVC values. *See* 20 C.F.R. §718.103(a). The regulations require an FEV1 value and an FVC **or** MVV value. *Id*. (emphasis added). Moreover, we reject claimant's assertion that the November 28, 1995 pulmonary function study does not conform to the quality standards because claimant's cooperation was not reported. *See Siwiec*, *supra*; *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987). The administrative law judge correctly observed that Dr. Ahluwalia reported that claimant's "[c]omprehension was good [and his] effort was slightly variable." Decision and Order at 6. Furthermore, the administrative law judge properly discredited Dr. Kraynak's opinion, that the November 28, 1995 pulmonary function study is non-conforming, because the administrative law judge found Dr. Kraynak's opinion to be not well reasoned.[6] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Hence, we reject claimant's assertion that the administrative law judge impermissibly substituted his opinion that this study is valid for that of Dr. Kraynak.[7] The Board cannot 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); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Therefore, we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(1).

Next, claimant contends that the administrative law judge erred in finding that the medical opinions of Drs. Ahluwalia and Kraynak are insufficient to establish total disability at 20 C.F.R. §718.204(c)(3). We disagree. The administrative law judge stated that "[w]hile the evidence may or may not show cor pulmonale, ...there is no evidence of right-sided congestive heart failure." Decision and Order at 8. Dr. Kraynak diagnosed cor pulmonale with atrial enlargement. Claimant's Exhibit 13. Dr. Ahluwalia, in a report dated December 6, 1995, opined that claimant's atrial enlargement is not based on chronic obstructive pulmonary disease, but is probably secondary to coal workers' pneumoconiosis and may be evidence for pulmonary hypertension due to coal workers' pneumoconiosis.

[6]The administrative law judge stated that "Dr. Kraynak's criticism of 'frequent variations' is non-specific as to which maneuvers, and his finding of an 'excessive baseline shift' was not presented in relation to the quality standards as set forth in Appendix B to Part 718." Decision and Order at 7.

[7]Claimant asserts that Dr. Ahluwalia did not review the tracings of the November 28, 1995 pulmonary function study. Contrary to claimant's assertion, there is no indication from the record that Dr. Ahluwalia failed to review the tracings of this study. Director's Exhibit 8; 20 C.F.R. §718.103(a).

Director's Exhibit 11. Since none of the medical evidence of record indicates that claimant suffers from cor pulmonale *with right sided congestive heart failure*, as required by 20 C.F.R. §718.204(c)(3), substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(3). *See Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989), *rev'd on other grounds*, 933 F.2d 510, 15 BLR 2-124 (7th Cir. 1991).

Finally, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish total disability at 20 C.F.R. §718.204(c)(4). We disagree. Whereas Dr. Ahluwalia opined that claimant does not suffer from a respiratory impairment, Director's Exhibit 9, Dr. Kraynak opined that claimant suffers from a total respiratory disability, Claimant's Exhibits 2, 13. The administrative law judge properly accorded determinative weight to the opinion of Dr. Ahluwalia over the contrary opinion of Dr. Kraynak because the administrative law judge found Dr. Ahluwalia's opinion to be better supported by the objective evidence of record.[8] *See Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Pastva v. The Youghiogheny and Ohio Coal Co.*, 7 BLR 1-829 (1985). In addition, the administrative law judge properly accorded greater weight to Dr. Ahluwalia's opinion because Dr. Ahluwalia performed a more thorough examination of claimant.[9] *See Hall v. Director, OWCP*, 8 BLR 1-193 (1985). Further, the administrative law judge properly discounted the opinion of Dr. Kraynak because the administrative law judge found Dr. Kraynak's opinion to be not well reasoned.[10] *See Clark, supra*; *Fields, supra*; *Fuller, supra*. Claimant also asserts that the administrative law judge should have accorded determinative weight to Dr. Kraynak's opinion because Dr. Kraynak is claimant's treating physician. While an administrative law judge may accord greater weight to the medical opinion of a treating physician, *see Onderko v. Director, OWCP*, 14 BLR 1-2 (1989), he is not required to do so, *see Tedesco*

[8]The administrative law judge stated that "[t]he one valid pulmonary function study produced non-qualifying values." Decision and Order at 11. Further, the administrative law judge stated that "[t]he one arterial blood gas study produced non-qualifying values." *Id*.

[9]The administrative law judge stated that "Dr. Ahluwalia performed a very thorough examination of the Claimant." Decision and Order at 11. The administrative law judge observed that "[i]n addition to a physical examination, x-ray and pulmonary function study, [Dr. Ahluwalia] obtained an EKG and an arterial blood gas study." *Id*.

[10]The administrative law judge stated that Dr. Kraynak "has not accounted for the normal values obtained by Dr. Ahluwalia." Decision and Order at 11. Further, the administrative law judge stated that "Dr. Kraynak has made a diagnosis of cor pulmonale based on the EKG, but did not explain how the EKG supports that conclusion -- the EKG report and Dr. Ahluwalia's interpretation does not mention cor pulmonale." *Id*. Moreover, the administrative law judge stated that Dr. Kraynak "took the suggestions of atrial enlargement and pulmonary hypertension on the EKG, and without any explanation, accepted them as final diagnoses." *Id*.

v. Director, OWCP, 18 BLR 1-103 (1994); *Wetzel, supra*; *Burns v. Director, OWCP*, 7 BLR 1-597 (1984). Thus, we affirm the administrative law judge's finding that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(c)(4),[11] as supported by substantial evidence.[12]

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH

[11]We reject claimant's assertion of bias by the administrative law judge in weighing the conflicting medical evidence because there is no evidence in the record to support this assertion. *See generally Cochran v. Consolidation Coal Co.*, 12 BLR 1-136 (1989).

[12]In view of our disposition of this case, we decline to address claimant's contention regarding the administrative law judge's length of coal mine employment finding.

Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge