BRB Nos. 98-0582 BLA
and 98-0582 BLA-A

ALVIN DOTSON	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL CORPORATION	)	
	)	
Employer-Petitioner	)	
Cross-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:
	)	
Party-in-Interest	)	DECISION AND ORDER

Appeal of the Decision and Order Granting Benefits and Order Supplementing Decision and Order Granting Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Bobby S. Belcher, Jr. (Wolfe & Farmer), Norton, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Jennifer U. Toth (Henry L. Solano, Solicitor of Labor; 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 BROWN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals and claimant cross-appeals the Decision and Order Granting Benefits and Order Supplementing Decision and Order Granting Benefits (97-BLA-0014) of Administrative Law Judge Pamela Lakes Wood 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 determined that this claim involved a request for modification of the Decision and Order denying benefits of Administrative Law Judge Richard K. Malamphy, dated February 24, 1995, and affirmed by the United States Court of Appeals for the Fourth Circuit on December 15, 1995, pursuant to 20 C.F.R. §725.310.[1] In considering claimant's request for modification, the

[1] Claimant filed his original application for benefits on May 1, 1989. Director's Exhibit 1. In a Decision and Order dated February 26, 1992, Administrative Law Judge Peter McC. Giesey awarded benefits, crediting claimant with more than thirty years of coal mine employment and finding that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), 718.203(b). Judge Giesey further found the medical evidence sufficient to establish that claimant was totally disabled pursuant to 20 C.F.R. §718.204(c). In addition, he found that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Director's Exhibit 34. On appeal, the Board affirmed Judge Giesey's decision to credit claimant with more than thirty years of coal mine employment and his findings under Sections 718.203(b) and 718.204(c)(1). However, the Board vacated his finding that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). The Board also vacated Judge Giesey's finding that claimant established a totally disabling respiratory or pulmonary impairment under Section 718.204(c)(2), (c)(4) and that his total disability was due to pneumoconiosis pursuant to Section 718.204(b). Consequently, the Board remanded the case to Judge Giesey for further consideration of the relevant medical evidence. *Dotson v. Clinchfield Coal Company*, BRB No. 92-1249 BLA (June 13, 1994)(unpublished); Director's Exhibit 41.

On remand, the case was reassigned to Administrative Law Judge Richard K. Malamphy, who issued a Decision and Order on February 24, 1995, denying benefits. Judge Malamphy found the medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). However, he found that the medical evidence was insufficient to establish a totally disabling pulmonary or respiratory impairment pursuant to Section 718.204(c). Accordingly, Judge Malamphy denied benefits. Director's Exhibit 43. On appeal, the Board affirmed Judge Malamphy's denial of benefits, holding that he reasonably found that the medical evidence of record was insufficient to establish a totally disabling pulmonary or respiratory impairment pursuant to Section 718.204(c). *Dotson v. Clinchfield Coal Co.*, BRB No. 95-1196 BLA (Aug. 10, 1995)(unpublished); Director's Exhibit 48. In a decision dated December 15, 1995, the

administrative law judge found the newly submitted blood gas study and medical opinion evidence sufficient to establish a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c)(2) and (c)(4). Therefore, the administrative law judge found the newly submitted evidence sufficient to establish a change in conditions pursuant to Section 725.310. The administrative law judge, noting that claimant previously established the existence of pneumoconiosis, further found that the evidence of record, as a whole, was sufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c). In addition, the administrative law judge found the medical evidence of record sufficient to establish that claimant's total disability was caused, at least in part, by his pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge awarded benefits. In a supplemental Decision and Order, the administrative law judge determined that the date of commencement of benefits was January 1996, the month in which claimant filed his request for modification.

On appeal, employer challenges the administrative law judge's award of benefits. Specifically, employer contends that the administrative law judge erred in finding the newly submitted evidence sufficient to establish a totally disabling respiratory impairment pursuant to Section 718.204(c). In addition, employer contends that the administrative law judge erred in finding that the new evidence established a change in conditions pursuant to Section 725.310. Furthermore, employer contends that the administrative law judge erred in finding the evidence sufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Claimant has not responded to employer's appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter stating that he will not file a response brief in this appeal.

In a cross-appeal, claimant contends that the administrative law judge erred in not rendering a specific finding regarding the date of commencement of benefits and that the Office of Workers' Compensation Programs erred in setting January 1, 1996 as the date of the commencement of benefits without such a finding being rendered by the administrative law judge. Employer has not responded to claimant's cross-appeal. The Director responds, stating that the administrative law judge, in a supplemental Decision and Order, properly

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United States Court of Appeals for the Fourth Circuit affirmed the denial of benefits. *Dotson v. Clinchfield Coal Co.*, No. 95-2701 (4th Cir. Dec. 15, 1995)(unpublished); Director's Exhibit 51. Thereafter, on January 30, 1996, claimant filed his request for modification. Director's Exhibit 50.

determined January 1, 1996 as the date of the commencement of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable 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 considering whether a claimant has established a change in conditions pursuant to Section 725.310, an administrative law judge must consider all of the newly submitted evidence, in conjunction with the previously submitted evidence, to determine if the new evidence is sufficient to establish at least one of the elements of entitlement which defeated entitlement in the prior decision. *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993). In addition, the United States Court of Appeals for the Fourth Circuit, under whose jurisdiction the instant case arises, has held that a claimant's general allegation of error is sufficient to require the administrative law judge to consider the entire record in addressing whether there was a mistake in a determination of fact. 20 C.F.R. §725.310; *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

In the instant case, the administrative law judge determined that Judge Malamphy denied benefits based on Judge Malamphy's finding that the evidence of record was insufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c). Decision and Order at 8. In considering all of the newly submitted evidence, the administrative law judge found that the new blood gas study and new medical opinion evidence of record was sufficient to establish total disability pursuant to Section 718.204(c)(2) and (c)(4) and, therefore, that claimant established a change in conditions pursuant to Section 725.310. Decision and Order at 10.

We affirm the administrative law judge's finding that the newly submitted medical evidence is sufficient to establish a change in conditions pursuant to Section 725.310, inasmuch as the administrative law judge reasonably exercised her discretion, as trier-of-fact, in finding that this evidence was sufficient to establish a totally disabling respiratory or pulmonary impairment. Decision and Order at 10. The administrative law judge reasonably found that the new blood gas study evidence, consisting of the December 1995 study which yielded borderline values and the March 1996 study which yielded qualifying values, was sufficient to establish total disability pursuant to Section 718.204(c)(2).[2]

[2] A "qualifying" blood gas 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 C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(2).

Decision and Order at 9; Director's Exhibits 50, 52; *see Marsiglio v. Director, OWCP*, 8 BLR 1-190 (1985); *Piniansky v. Director, OWCP*, 7 BLR 1-171 (1984). Furthermore, we reject employer's contention that the administrative law judge erred in failing to weigh the blood gas study evidence against the contrary, probative evidence of record, like and unlike, in determining that the blood gas study evidence was sufficient to establish total disability pursuant to Section 718.204(c)(2) inasmuch as the administrative law judge considered all of the contrary, probative evidence in her weighing of the medical opinion evidence pursuant to Section 718.204(c)(4), as discussed, *infra*. Decision and Order at 10.

Moreover, employer contends that the administrative law judge erred in the weight she accorded the medical opinion evidence of record and, in particular, contends that the administrative law judge erred in substituting her own interpretation of the significance of the qualifying blood gas study and other examination results for that of Dr. Sargent, who opined that claimant was able to perform his usual coal mine employment, Director's Exhibit 52; Employer's Exhibit 1. However, contrary to employer's contention, the administrative law judge did not substitute her own interpretation of the medical evidence for that of Dr. Sargent. Rather, the administrative law judge reviewed all of the factors considered by Drs. Sargent and Robinette in rendering their opinions and reasonably exercised her discretion in finding that Dr. Robinette's opinion, that claimant was unable to perform his usual coal mine employment due to his pulmonary disease, is better reasoned and more consistent with the objective evidence. Decision and Order at 9-10; Director's Exhibit 50; *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Pastva v. The Youghiogheny & Ohio Coal Co.*, 7 BLR 1-829 (1985). Therefore, since the administrative law judge is charged with the evaluation and weighing of the medical evidence, may draw appropriate inferences therefrom, and is not required to credit the conclusions of any particular medical expert, we affirm the administrative law judge's decision to defer to the medical opinion of Dr. Robinette, which she found was best supported by the objective clinical evidence of record, over the contrary opinion of Dr. Sargent. *See Lafferty, supra; see also Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Employer also contends that the administrative law judge erred in finding that Dr. Robinette's 1995 opinion was sufficient to establish a change in conditions inasmuch as it was based on objective findings similar to those reported in his 1991 opinion, wherein Dr. Robinette did not render an opinion as to whether claimant was able to perform his usual coal mine employment. Contrary to employer's contention, the administrative law judge considered the entirety of Dr. Robinette's 1995 opinion, including that numerous aspects of the 1995 opinion were similar to Dr. Robinette's 1991 opinion. Decision and Order at 9; Director's Exhibits 41, 50. The administrative law judge reasonably exercised her discretion in finding that Dr. Robinette's 1995 opinion, which was based on the results from his 1995 testing, including an abnormal x-ray reading, reduction in FEV1 and FVC

values, hypoxemia and claimant's history, was sufficient to establish a totally disabling respiratory or pulmonary impairment and was thus sufficient to establish a change in conditions from the 1991 denial of benefits. *See* 20 C.F.R. §725.310; *Nataloni, supra*; *see also Amax Coal Co. v. Franklin*, 957 F.2d 355, 16 BLR 2-50 (7th Cir. 1992); *Lafferty, supra; Kuchwara, supra.* We, therefore, affirm the administrative law judge's finding that claimant established total disability under Section 718.204(c).

In challenging the administrative law judge's finding that the medical evidence of record was sufficient to establish that claimant's total disability was due, at least in part, to his pneumoconiosis pursuant to Section 718.204(b), employer contends that the administrative law judge erred in rejecting Dr. Sargent's opinion that smoking was the cause of claimant's respiratory impairment because she impermissibly substituted her own interpretation of the examination results for that of Dr. Sargent. In particular, employer contends that the administrative law judge erred in not crediting Dr. Sargent's interpretation of the carboxyhemoglobin level from claimant's blood gas studies as the basis for his opinion regarding the cause of claimant's total disability. Employer also contends that the administrative law judge erred in failing to consider Dr. Sargent's deposition testimony in her weighing of the medical evidence of record. Contrary to employer's contention, the administrative law judge fully discussed all of the relevant medical evidence of record, including the medical reports and deposition testimony, and reasonably accorded greater weight to Dr. Robinette's opinion, finding his opinion better reasoned and better supported by the objective evidence.[3] Decision and Order at 5-7, 11; *see Lafferty, supra; Lucostic, supra; Pastva, supra.* Therefore, we affirm the administrative law judge's finding that the weight of the medical opinion evidence is sufficient to meet claimant's burden pursuant to

[3] Inasmuch as the administrative law judge permissibly credited Dr. Robinette's opinion over Dr. Sargent's opinion on the ground that it was more consistent with the objective and other evidence of record, any error in the administrative law judge's other reasons for giving less weight to Dr. Sargent's opinion would be harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). Moreover, we affirm the administrative law judge's finding that the opinion of Dr. Paranthaman, who diagnosed coal workers' pneumoconiosis and chronic bronchitis due to the combined effect of coal dust exposure and smoking, and opined that claimant had a mild respiratory impairment, *see* Director's Exhibit 8, was supportive of Dr. Robinette's opinion inasmuch as it was not unreasonable for the administrative law judge to infer that any respiratory impairment diagnosed by Dr. Paranthaman was due to coal workers' pneumoconiosis and chronic bronchitis due to coal dust exposure and smoking inasmuch as these were the only respiratory conditions diagnosed by Dr. Paranthaman. Decision and Order at 11-12; *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985); *see generally Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989) .

Section 718.204(b).[4] 20 C.F.R. §718.204(b); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990); *see also Hobbs v. Clinchfield Coal Co.* [*Hobbs II*], 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995).

Finally, claimant, in a cross-appeal, challenges the administrative law judge's determination of January 1, 1996 as the date of commencement of benefits, asserting that the administrative law judge erred in failing to render a specific finding on this issue. In addition, claimant contends that the Office of Workers' Compensation Programs erred in assigning a date for commencement of benefits without such a finding being rendered by the administrative law judge. These contentions lack merit.

[4] As noted by the administrative law judge, the United States Court of Appeals for the Fourth Circuit has held that, in order to establish entitlement, a claimant's pneumoconiosis must be a contributing cause of a totally disabling respiratory or pulmonary impairment. *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990); Decision and Order at 10.

Contrary to claimant's contention, the administrative law judge, on December 16, 1997, issued a supplemental Decision and Order finding January 1996 as the date of the commencement of benefits. In so finding, the administrative law judge reasonably determined that the medical evidence of record was insufficient to establish the month in which claimant's pneumoconiosis progressed to the point of being totally disabling and, therefore, reasonably found the date of commencement of benefits was January 1996, the month in which claimant filed his request for modification.[5] Order Supplementing Decision and Order Granting Benefits at 1-2; 20 C.F.R. §725.503(b); *see Eifler v. Director, OWCP*, 926 F.2d 663, 15 BLR 2-1 (7th Cir. 1991); *Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989); *see also Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989).

[5] As a general rule, once claimant's entitlement to benefits has been demonstrated, the date for commencement of those benefits is determined by the date of onset, *i.e.*, the month in which the occupational pneumoconiosis progressed to the stage of total disability. 20 C.F.R. §§725.503, 727.302; *Edmiston v. F & R Coal Co.*, 14 BLR 1-710 (1990). If the date of onset is not ascertainable from the medical evidence of record, then benefits commence with the month during which the claim was filed, unless there is evidence, which the administrative law judge finds credible, establishing that claimant was not totally disabled at some point subsequent to his filing date. *Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). In the instant case involving a request for modification, the administrative law judge appropriately awarded benefits commencing the month during which the modification request was filed. *See Eifler v. Director, OWCP*, 926 F.2d 663, 15 BLR 2-1 (7th Cir. 1991).

Accordingly, the administrative law judge's Decision and Order Granting Benefits and Order Supplementing Decision and Order Granting Benefits are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge