

BRB No. 04-0486 BLA

STANLEY J. STASIUM)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 01/12/2005
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Harry T. Coleman, Scranton, Pennsylvania, for claimant.

Helen H. Cox (Howard M. Radzely, 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: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2003-BLA-0184) of Administrative Law Judge Ralph A. Romano denying modification and 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).¹ The administrative law judge credited claimant

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2004). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

with four and one-quarter years of qualifying coal mine employment, and adjudicated this claim, filed on March 15, 1994, pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge determined that claimant submitted no new evidence but filed a timely request for modification premised upon a mistake in a determination of fact in the prior Decision and Order denying benefits issued by Administrative Law Judge Robert D. Kaplan on August 31, 2000. Decision and Order at 3; Director's Exhibits 69, 93, 95. The administrative law judge further determined that Judge Kaplan found the evidence insufficient to establish the existence of pneumoconiosis, and that Judge Kaplan's Decision and Order had been affirmed by the Board and upheld by United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises. Decision and Order at 3-4, 6; Director's Exhibits 88, 90. The administrative law judge then considered the new evidence submitted by the Director, Office of Workers' Compensation Programs (the Director), in conjunction with the earlier evidence, and found that claimant had failed to establish either a change in conditions or a mistake in a prior determination of fact pursuant to 20 C.F.R. §725.310 (2000), as the weight of the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied modification and denied benefits.

On appeal, claimant asserts generally that the evidence is sufficient to establish entitlement to benefits, and that the administrative law judge was improperly predisposed to deny benefits. The Director responds, urging affirmance.

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 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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. We find no merit in claimant's argument that the administrative law judge was predisposed to deny benefits "due to the long procedural quagmire which this case has developed into." Claimant's Brief at 3-4. The Director correctly maintains that the record contains no evidence of bias on the part of the administrative law judge, and notes that despite the lengthy litigation which preceded claimant's request for modification, the Third Circuit independently reviewed the record before Judge Kaplan and found that substantial evidence supported his decision denying benefits. Director's Brief at 4; Director's Exhibit 90; *see generally Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).

Turning to the merits, claimant asserts that the x-ray interpretation and medical report of Dr. Talati establish the presence of pneumoconiosis, and claimant contends that the administrative law judge erred in rejecting this evidence without providing a rational explanation. We disagree. The administrative law judge accurately determined that although Dr. Talati diagnosed simple pneumoconiosis in his original report dated July 31, 2003, and interpreted an x-ray film dated June 23, 2003 as positive for pneumoconiosis, Dr. Talati possessed no special radiological qualifications and changed his opinion after reviewing the negative x-ray interpretation of the same film by Dr. Barrett, a Board-certified radiologist and B-reader. Decision and Order at 5, 7; Director's Exhibits 100, 104. As Dr. Talati opined in his follow-up letter dated September 8, 2003 that claimant "has no pneumoconiosis," Director's Exhibit 104, the administrative law judge properly concluded that Dr. Talati's x-ray interpretation and medical opinion were insufficient to establish the existence of pneumoconiosis as defined at 20 C.F.R. §718.201. Decision and Order at 5-7; *see generally Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997). Because claimant has not alleged any other specific legal or factual errors in the administrative law judge's weighing of the medical evidence pursuant to Section 718.202, or in the administrative law judge's finding that claimant failed to establish either a mistake in a prior determination of fact or a change in conditions pursuant to Section 725.310 (2000), *see Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995), we affirm the administrative law judge's findings thereunder, and affirm his denial of benefits. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge