

BRB No. 97-0802 BLA

WILLIAM M. MOORE	)	
	)	
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 - Denial of Benefits on Remand from the Benefits Review Board of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Jennifer U. Toth (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: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits on Remand from the Benefits Review Board (96-BLA-1225) of Administrative Law Judge Paul H. Teitler 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).

A summary of the procedural history is as follows: Claimant filed for black lung benefits on January 20, 1981. Director's Exhibit 1. Administrative Law Judge James J. Butler awarded benefits on July 26, 1984. Director's Exhibit 31. Following an appeal by the Director, Office of Workers' Compensation Programs (the Director), the Board vacated the award and remanded the case for reconsideration at 20 C.F.R. §718.204(c),

on February 27, 1987. *Moore v. Director, OWCP*, BRB No. 84-1917 BLA (Feb. 27, 1987)(unpub.). Director's Exhibit 39. On remand Judge Butler denied benefits on August 14, 1987, and on reconsideration on February 19, 1988. Director's Exhibits 40, 42. Claimant appealed. The Board dismissed that appeal without prejudice when claimant petitioned for modification. Director's Exhibit 45. Administrative Law Judge Paul H. Teitler (the administrative law judge) denied modification on November 21, 1990. Director's Exhibit 76. Claimant appealed. The Board reinstated claimant's dismissed appeal and reviewed it, along with his most recent appeal. The Board vacated the denial of benefits and remanded for the administrative law judge to reconsider Section 718.204(c) and (b), if reached. *Moore v. Director, OWCP*, BRB Nos. 91-0636 BLA and 88-0947 BLA ( June 28, 1994)(unpub.). Director's Exhibit 88. On remand, Judge Teitler denied benefits in a Decision and Order issued on March 29, 1995. Director's Exhibit 92. On September 5, 1995, claimant timely sought modification of that Decision and Order. Director's Exhibit 94. The district director denied benefits and the case was transferred to the Office of Administrative Law Judges on June 3, 1996 for a formal hearing. Director's Exhibit 104.

The administrative law judge adjudicated the case as a petition for modification pursuant to 20 C.F.R. §725.310 under 20 C.F.R. Part 718. He determined that the issue before him was total respiratory disability at Section 718.204(c), and causation at Section 718.204(b), if reached. He found the evidence insufficient to establish that there was a mistake in a determination of fact or a change in conditions with respect to Section 718.204(c). Accordingly, he denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that claimant failed to demonstrate total respiratory disability at Section 718.204(c)(1) and (c)(4).<sup>1</sup> The Director, Office of Workers' Compensation Programs, in response, urges 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);

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<sup>1</sup>The parties stipulated to 12 years of coal mine employment and the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b). [1997] Decision and Order at 2; Hearing Transcript at 5-6. We affirm, as unchallenged, the administrative law judge's finding at 20 C.F.R. §718.204(c)(2) and (c)(3). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

*O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965)

After consideration of the administrative law judge’s Decision and Order, the arguments on appeal and the relevant evidence of record, we conclude that the administrative law judge’s Decision and Order is supported by substantial evidence , contains no reversible error, and therefore it is affirmed.

In adjudicating the instant petition for modification pursuant to Section 725.310, the administrative law judge properly applied the governing standard in *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995), which, *inter alia*, requires consideration of the entirety of the medical evidence. *See also Kingery v. Hunt Branch Coal Co.*, 19 BLR 1-6 (1994); *Napier v. Director, OWCP*, 17 BLR 1-111 (1993); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); Decision and Order at 2, 6, 7, 8.

We reject claimant’s contention that the administrative law judge erred at Section 718.204(c)(1) in discounting the qualifying pulmonary function studies administered by Dr. Kraynak. Decision and Order at 2. In making his finding that the evidence was insufficient to demonstrate total respiratory disability at Section 718.204(c)(1), the administrative law judge fully set forth the reasoning by Drs. Kraynak, Levinson and Sahillioglu regarding their analyses of the pulmonary function studies. Decision and Order at 3-5. The administrative law judge properly credited the invalidations by Drs. Levinson and Sahillioglu over Dr. Kraynak’s validation of the studies he administered, based on the superior qualifications of Drs. Levinson and Sahillioglu. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985)(2-1 opinion with Brown. J. dissenting). Moreover, the administrative law judge found the qualifying values reflected in studies administered by Dr. Kraynak were unreliable because of their disparity with Dr. Green’s July 1, 1996 study, which demonstrated higher values when claimant was eighty-one years of age.<sup>2</sup> *See Baker v. North American Coal Corp.*, 7 BLR 1-79 (1984); *Burich v. Jones & Laughlin Steel Corp.*, 6 BLR 1-1189 (1984)(administrative law judge may discredit a pulmonary function study which is disparately low in comparison with other studies); Decision and Order at 6, 8. Hence, in the instant case the administrative law judge provided an adequate rationale for crediting the invalidations of Drs. Levinson and Sahillioglu, *see Siegel, supra; Winchester v. Director, OWCP*, 9 BLR 1-177 (1986). We therefore affirm the administrative law judge’s finding that the evidence is insufficient to demonstrate total respiratory disability at Section 718.204(c)(1), as based on substantial evidence.

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<sup>2</sup>The Director correctly notes that the August 27, 1996 pulmonary function study conducted by Dr. Kraynak is non-qualifying. Claimant’s Exhibit 3. Dr. Kraynak’s non-qualifying study is contemporaneous with the non-qualifying September 9, 1996 study by Dr. Green on which the administrative law judge relied. Director’s Exhibit 106.

The administrative law judge properly found that none of the blood gas studies of record is qualifying and there is no evidence of cor pulmonale with right sided congestive heart failure. 20 C.F.R §718.204(c)(2) and (c)(3).

With respect to Section 718.204(c)(4), contrary to claimant's contention, the administrative law judge was not required to credit Dr. Kraynak's opinion that claimant was totally and permanently disabled from pneumoconiosis over Dr. Green's opinion simply because Dr. Kraynak was a treating physician. The status of the physician is only one factor to be considered by the administrative law judge in according weight to a medical opinion. See *Scharf v. Matthews*, 574 F.2d 157 (3d Cir. 1978); see also *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). While the administrative law judge acknowledged that Dr. Kraynak was a treating physician, Decision and Order at 5, he reasonably relied on the opinion of Dr. Green, who opined that claimant had the respiratory capacity to perform his usual coal mine employment, based on Dr. Green's superior qualifications in pulmonary medicine and because his opinion was based on a reliable pulmonary function study. See *Clark, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucoctic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Thus, the administrative law judge permissibly discounted Dr. Kraynak's opinion as it is less supported by the underlying documentation, see generally *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Clark, supra*. Moreover, contrary to claimant's assertion, the administrative law judge permissibly credited the opinion of Dr. Green regarding the severity of claimant's alleged disability, even though Dr. Green failed to diagnose pneumoconiosis. The issue at Section 718.204(c) is the extent or degree of any respiratory disability, not the etiology of the disability. See *Taylor v. Evans and Gambrel Company, Inc.*, 12 BLR 1-83 (1988); see generally *Beatty v. Danri Corporation & Triangle Enterprises*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995). We therefore affirm the administrative law judge's finding that the evidence is insufficient to establish total respiratory disability at Section 718.204(c), as based on substantial evidence and in accordance with law. Because claimant failed to establish a mistake in a determination of fact or a change in conditions since the prior denial of benefits, we affirm the administrative law judge's denial of benefits. See *Keating, supra*.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits on Remand from the Benefits Review Board is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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JAMES F. BROWN  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge