BRB No. 98-0573 BLA

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

Appeal of the Decision and Order of Alfred Lindeman, Administrative Law Judge, United States Department of Labor.

Bill Craft, Jenkins, Kentucky, *pro se*.

Cathryn Celeste Helm (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, the United States Department of Labor.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant,[1] without the assistance of counsel,[2] appeals the Decision and Order

[1] Claimant is Bill Craft, the miner, who filed his present claim for benefits on July 9, 1991, which Administrative Law Judge Frederick D. Neusner denied on August 15, 1995, and claimant requested modification on July 15, 1996. Director's Exhibits 1, 34. Claimant's first claim filed on March 24, 1980 was finally denied by the United States Court of Appeal for the Sixth Circuit on September 19, 1988. Director's Exhibit 30.

[2] Susie Davis, a lay representative with the Kentucky Black Lung Association in

(97-BLA-0583) of Administrative Law Judge Alfred Lindeman 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, applying the regulations at 20 C.F.R. Part 718, noted that the miner previously established thirty years and nine months of coal mine employment and found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order at 1, 7, 10-11. The administrative law judge also found that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). Decision and Order at 11-13. Accordingly, benefits on modification were denied. Thereafter, claimant filed a request for reconsideration, which the administrative law judge denied. Order at 1.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds, urging affirmance.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by the Act, 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates*, Inc., 380 U.S. 359 (1965).

Pikeville, Kentucky, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Davis is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Pursuant to Section 718.202(a)(1), the administrative law judge permissibly found the new x-ray evidence insufficient to establish the existence of pneumoconiosis by relying on the negative x-ray interpretations rendered by the physicians who were both B-readers[3] and board-certified radiologists. Decision and Order at 7; *see Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Johnson v. Island Creek Coal Co.*, 846 F.2d 364, 11 BLR 2-161 (6th Cir. 1988); *Creech v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988); *see also Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Specifically, the administrative law judge noted that although the June 13, 1990 and December 31, 1991 x-rays were read as positive, these x-rays were reread as negative by Dr. Sargent, a physician with superior qualifications to the physicians rendering the positive readings. Decision and Order at 7. Additionally, the administrative law judge noted that the August 15, 1991 x-ray was read only as negative by Drs. Sargent and Halbert, both dually qualified, and rationally found Dr. Hashem's reading of the December 15, 1992 x-ray to be equivocal. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *see also Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). Moreover, the administrative law judge permissibly found the readings of the November 29, 1994 and February 28, 1995 x-rays to be in

[3] A "B-reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-16 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

equipoise inasmuch as these x-rays were read as negative and positive by dually qualified readers. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Therefore, we affirm the administrative law judge's finding that claimant has failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).[4]

[4] There is no biopsy or autopsy evidence in the record that establishes the existence of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(2). The presumptions found at Sections 718.304, 718.305, and 718.306 are inapplicable to this living miner's claim filed after January 1, 1982, *see Kubachka v. Windsor Power House Coal Corp.*, 11 BLR 1-171 (1988), in which there is no evidence of complicated pneumoconiosis, *see generally Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Therefore, we affirm the administrative law judge's findings pursuant to Section 718.202(a)(2) and (3).

Of the newly submitted medical opinions, Drs. Sundaram and Caizzi found coal workers' pneumoconiosis. The administrative law judge permissibly rejected the diagnosis of pneumoconiosis by Dr. Sundaram because this physician based his opinion on a smoking history of, at most, one pack per day for thirteen years whereas claimant testified to a smoking history of about two packs per day for fifty years, [1997] Hearing Transcript at 22. Decision and Order at 10; *see Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1983). Additionally, the administrative law judge rationally found the opinion of Dr. Caizzi, the miner's treating physician, to be unreasonable because she apparently did not render her own findings, but rather adopted the opinions of two physicians, which are not in the record.[5] *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); *see also Tackett, supra; Calfee, supra*. The administrative law judge also permissibly found that Dr. Mettu's opinion is insufficient to support the existence of pneumoconiosis inasmuch as he did not identify an etiology of claimant's chronic bronchitis, Director's Exhibit 7. *See* 20 C.F.R. §718.201; *Southard v. Director, OWCP*, 732 F.2d 66, 6 BLR 2-26 (6th Cir. 1984); *see also Shaffer v. Consolidation Coal Co.*, 17 BLR 1-56 (1992); *Biggs v. Consolidation Coal Co.*, 8 BLR 1-317 (1987). Therefore, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

The administrative law judge permissibly found that total respiratory disability could not be demonstrated pursuant to Section 718.204(c)(1) inasmuch as three of the four newly submitted pulmonary function studies yielded non-qualifying[6] values,

[5] Dr. Caizzi found "severe COPD and 'coal miner's pneumoconiosis' according to medical history of Dr. Soto and Dr. Tidal." Director's Exhibit 34.

[6] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(c)(1), (2).

and he rationally found the validity of the one qualifying pulmonary function study called into question by the technician's notations, Director's Exhibit 34. *See Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); *see also Tackett, supra; Calfee, supra*.

The administrative law judge properly found that total respiratory disability could not be demonstrated pursuant to Section 718.204(c)(2) and (3) inasmuch as the newly submitted blood gas study did not yield qualifying values, *see Tucker v. Director, OWCP*, 10 BLR 1-35 (1987), and the record does not contain evidence of cor pulmonale with right-sided congestive heart failure, *see* 20 C.F.R. §718.204(c)(3). Decision and Order at 11.

Considering the new medical opinions, the administrative law judge noted that Dr. Sundaram found claimant to be totally disabled from coal mine employment, but stated that in doing so this physician did not account for the non-qualifying pulmonary function and blood gas studies. *See Clark, supra; Fields, supra; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *see generally Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673, 1-675 (1983). Additionally, the administrative law judge permissibly found Dr. Mettu's finding of "a very mildly decreased PO2, otherwise normal," without further elaboration, to be insufficient to establish total respiratory disability, Director's Exhibit 7. *See Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Wright v. Director, OWCP*, 8 BLR 1-245 (1985). Therefore, we affirm the administrative law judge's Section 718.204(c)(4) finding inasmuch as he properly weighed the medical opinion evidence, *see Markus v. Old Ben Coal Co.*, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983)(administrative law judge is not bound to accept opinion or theory of any given medical officer, but weighs evidence and draws his own inferences); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Kuchwara, supra*.

In conclusion, in light of the totality of the administrative law judge's findings, *see Sykes v. Director, OWCP*, 812 F.2d 890, 10 BLR 2-95 (4th Cir. 1987); *Markus, supra*, it is apparent that the administrative law judge based his determination of no mistake in fact or change in conditions on a review of the entire record, *see Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1991); *Kovac v. BCNR Mining Corp.*, 15 BLR 1-156 (1990), *aff'd on recon*. 16 BLR 1-71 (1992). Therefore, we affirm the administrative law judge's denial of modification pursuant to Section 725.310(a). *See Worrell, supra; Nataloni, supra; Kovac, supra*.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge