

BRB No. 89-1316 BLA

WILLIAM BURDETT)
)
 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 A. A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

George C. Longshore (Longshore, Nakamura & Quinn), Birmingham, Alabama, for claimant.

Elizabeth J. Shapiro (Judith E. Kramer, Acting 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: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (88-BLA-535) of Administrative Law Judge A. A. Simpson, Jr., 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 found that the deputy commissioner permissibly initiated modification proceedings pursuant to 20 C.F.R. §725.310, based on new evidence filed subsequent to an award of benefits made by the Social Security Administration (SSA).¹ The administrative law judge credited claimant with twenty-two years of qualifying coal mine employment, but found that the evidence of record was insufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a). The administrative law judge further found that claimant had failed to establish entitlement pursuant to either 20 C.F.R. Part 410, Subpart D, or 20 C.F.R. §410.490, and that the Director, Office of Workers' Compensation Programs (the Director), had established a change in conditions pursuant to Section 725.310. Accordingly, benefits were denied. On appeal, claimant contends that the doctrines of res judicata, collateral estoppel, and laches preclude the Department of Labor (DOL) from re-opening this case and

¹ Claimant filed claims for benefits with the Social Security Administration (SSA) on February 19, 1970 and February 1, 1973, and with the Department of Labor (DOL) on March 23, 1977. Director's Exhibits 1, 34. Following SSA denials of his claims, and while claimant's case was pending before DOL, SSA awarded benefits upon review under Section 435 of the Act. Director's Exhibits 17, 34. The parties then agreed to remand claimant's DOL claim to the deputy commissioner for consolidation with the SSA claim and commencement of benefit payments by DOL. Director's Exhibit 21. After reviewing new medical evidence submitted in 1987, Director's Exhibit 23, and comparing it with the record as a whole, the deputy commissioner found that the criteria for eligibility had not been met, and ordered a suspension of benefits effective May 1987, pursuant to 20 C.F.R. §718.404(b). Director's Exhibit 28.

relitigating entitlement issues after SSA's award of benefits. Claimant additionally maintains that Dr. Goodman's positive x-ray interpretation, "borderline" pulmonary function study values, and the opinion of Dr. Compton are sufficient to establish invocation pursuant to Section 727.203(a)(1), (a)(2) and (a)(4), respectively. The Director responds, urging affirmance of the denial of benefits.

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 by 30 U.S.C. §932(a); 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 raised on appeal, and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence and contains no reversible error. Contrary to claimant's arguments, the provisions of Section 725.310 explicitly authorize the deputy commissioner, upon his own initiative, on the grounds of a change in conditions or because of a mistake in a determination of fact, to reconsider the terms of an award of benefits and to terminate benefit payments after the conclusion of modification proceedings. See Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, as incorporated by the Act, 30 U.S.C. §932(a), and implemented by 20 C.F.R. §725.310. Moreover, Section 435 of

the Act, 30 U.S.C. §945, does not preclude modification of SSA Reform Act review awards, see Cooper v. Director, OWCP, 11 BLR 1-95 (1988); rather, Section 435(a)(2)(A) merely provides that the SSA determination "shall be binding upon the Secretary of Labor as an initial determination of eligibility." 30 U.S.C. §945(a)(2)(A).

We therefore affirm the administrative law judge's finding that modification proceedings were authorized herein pursuant to Section 725.310.

Turning to the merits, the administrative law judge properly reviewed all of the x-ray evidence of record and the qualifications of the readers, and permissibly accorded greatest weight to the most recent films, which were uniformly interpreted as negative for pneumoconiosis by B-readers. Decision and Order at 3; see Handy v. Director, OWCP, 16 BLR 1-73 (1990); Trent v. Director, OWCP, 11 BLR 1-26 (1987).

The administrative law judge also properly found that since none of the pulmonary function or blood gas studies of record produced qualifying values, claimant failed to establish invocation pursuant to Section 727.203(a)(2) and (a)(3).² See generally Tischler v. Director, OWCP, 6 BLR 1-1086 (1984); Horn v. Jewell

² 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 20 C.F.R. §727.203(a)(2) and (a)(3), respectively. A "non-qualifying" study yields values that exceed those values.

Ridge Coal Corp., 6 BLR 1-933 (1984).

Finally, in finding that the medical opinions of record were insufficient to establish either the existence of pneumoconiosis or a totally disabling respiratory impairment, the administrative law judge permissibly accorded determinative weight to the opinion of Dr. Hasson, as he performed the most recent examination of claimant.³ Decision and Order at 4, 5; Director's Exhibit 23; see Wetzel v. Director, OWCP, 8 BLR 1-139 (1985); Bates v. Director, OWCP, 7 BLR 1-113 (1984). The administrative law judge's findings pursuant to Section 727.203(a)(1) - (a)(4) are supported by substantial evidence and are affirmed.

Inasmuch as claimant failed to establish either the existence of pneumoconiosis or a totally disabling respiratory impairment, claimant is precluded from entitlement to benefits under the Act. See generally Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); Roberts v. Bethlehem Mines Corp., 8 BLR 1-211 (1985). Consequently, we affirm the administrative law judge's finding that modification was appropriate, since new evidence established a change in conditions pursuant to

³ Contrary to claimant's arguments, the opinion of Dr. Compton is insufficient to establish invocation at Section 727.203(a)(1), as the physician did not discuss claimant's respiratory condition, but attributed his physical limitations to "osteoarthritic changes involving the lumbosacral spine and lumbosacral disc degeneration." Director's Exhibit 34. The administrative law judge accurately reviewed all of the medical opinions of record, none of which diagnosed a totally disabling respiratory impairment. Decision and Order at 4, 5. Drs. Goodman and Skoog, however, diagnosed pneumoconiosis, whereas Dr. Hasson found chronic bronchitis that was unrelated to coal mine employment and no pneumoconiosis. Director's Exhibits 9, 23, 34.

Section 725.310. See Kovac v. BCNR Mining Corp., 14 BLR 1-156 (1990), modified on recon., 16 BLR 1-71 (1992).

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

NANCY S. DOLDER
Administrative Appeals Judge