BRB No. 95-0776 BLA

SAMUEL W. BROWN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
SLAB FORK COAL COMPANY	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DECISION and ORDER

Party-in-Interest

Appeal of the Decision and Order of Eric Feirtag, Administrative Law Judge, United States Department of Labor.

John H. Shumate, Jr., Mount Hope, West Virginia, for claimant.

K. Keian Weld (West Virginia Coal Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (94-BLA-0104) of Administrative

Law Judge Eric Feirtag 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). Pursuant to the parties' stipulations, the administrative law judge credited claimant with thirteen years of coal mine employment and found the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a) and employer to be the responsible operator. Decision and Order at 2. The administrative law judge considered the newly submitted evidence, found no material change in conditions established pursuant to 20 C.F.R. §725.309(d), citing *Shupink v. LTV Steel Co.*, 17 BLR 1-24 (1992), and denied benefits.

On appeal, claimant challenges the finding of no material change in conditions. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.[2]

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

Claimant submitted three pulmonary function[3] and two blood gas studies, and three medical opinions in support of his duplicate claim. Director's Exhibits 8, 10, 11, 12; Employer's Exhibit 1; Claimant's Exhibit 1. The administrative law judge found that none of the newly submitted objective studies yielded qualifying[4] values, one medical opinion was unreasoned while the other two diagnosed no pulmonary impairment, and claimant's testimony alone was insufficient to establish total respiratory disability. Decision and Order at 3, 4-8. Based on these findings, the administrative law judge concluded that there was no reasonable possibility that the newly submitted evidence would change the prior administrative result.[5] Decision and Order at 6; *see Shupink, supra*.

Claimant alleges that the administrative law judge erred by failing to accord greater weight to the opinion of Dr. Salon, claimant's treating physician, than to that of Dr. Zaldivar. Claimant's Brief at p. 8 (unpaginated). We disagree. In determining whether a material change in conditions is established the administrative law judge may not weigh the items of newly submitted evidence against each other. *Shupink*, 17 BLR at 1-28.

In the instant case, the administrative law judge did not accord either opinion greater weight but rather found that Dr. Zaldivar diagnosed no pulmonary impairment while Dr. Salon's opinion was unreasoned and that, therefore, neither opinion established a material change in conditions. Decision and Order at 3-4. Inasmuch

as an administrative law judge may, but is not required to, credit a treating physician's opinion, *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Burns v. Director, OWCP*, 7 BLR 1-597 (1984); *see also Berta v. Peabody Coal Co*., 16 BLR 1-69 (1992), and it is the province of the administrative law judge as trier-of-fact to determine whether a medical opinion is reasoned, *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), we reject claimant's contention.

The remainder of claimant's brief merely recites favorable evidence. As claimant has not addressed the administrative law judge's Decision and Order with specificity in a way that demonstrates that substantial evidence does not support the result reached, we affirm the administrative law judge's finding at Section 725.309(d). *See* 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-118 (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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge