BRB Nos. 03-0584 BLA
and 03-0584 BLA-A

EVELYN R. RIEDEL (Widow of ALFRED B. RIEDEL)	)	
Claimant-Petitioner	)	
v.	)	
INTERNATIONAL ANTHRACITE CORPORATION	)	DATE ISSUED: 06/16/2004
Employer-Respondent Cross-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

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

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Ralph A. Carrozza (Marshall, Dennehy, Warner, Coleman & Goggin), Scranton, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order Denying Modification (2002-BLA-00420) of Administrative Law Judge Ralph A. Romano denying benefits with respect to a survivor's 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). Claimant, the surviving spouse of miner Alfred B. Riedel, filed an application for survivor's benefits on December 30, 1998.[1] Director's Exhibit 1. This claim was denied by Administrative Law Judge Ainsworth H. Brown in a Decision and Order issued on February 7, 2001. On June 22, 2001, the Board issued an Order dismissing claimant's appeal of the denial of benefits as claimant had not filed a petition for review or brief in support of her appeal. *Riedel v. International Anthracite Corp.*, BRB No. 01-0472 BLA (June 22, 2001)(unpub.). Claimant filed a request for modification dated October 30, 2001. The district director determined that claimant failed to demonstrate that a mistake in a determination of fact had been made in the prior denial pursuant to 20 C.F.R. §725.310 (2000) and rejected claimant's petition for modification.[2] At claimant's request, the case was transferred to the Office of Administrative Law Judges for a hearing and assigned to Administrative Law Judge Ralph A. Romano (the administrative law judge).

At the hearing, the administrative law judge denied employer's request that it be permitted to respond to four medical reports that claimant submitted shortly before the twenty-day rule, set forth in 20 C.F.R. §725.456(b)(3), was triggered. The administrative law judge also denied employer's motion to strike Dr. Fisk's report because it was submitted less than twenty days prior to the date of the hearing, but he permitted employer to submit evidence in rebuttal. In his Decision and Order, the administrative law judge noted that employer did not contest the fact that the miner had pneumoconiosis arising out of coal mine employment. The administrative law judge weighed the evidence of record relevant to the issue of whether pneumoconiosis caused or contributed to the miner's death pursuant to 20 C.F.R. §718.205(c) and determined that the medical opinion evidence was in equipoise. The administrative law judge concluded, therefore,

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[1] The miner was awarded benefits on a claim filed during his lifetime in a Decision and Order issued by Administrative Law Judge Ainsworth H. Brown on January 5, 1995. The Board affirmed the award of benefits in a Decision and Order dated July 11, 1995. *Riedel v. International Anthracite Corp.*, BRB No. 95-0909 BLA (July 11, 1995)(unpub). The miner died on December 13, 1998. Director's Exhibit 2.

[2] The 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations. The amended regulation pertaining to requests for modification does not apply to cases, like the present one, in which the claim was pending on January 19, 2001. 20 C.F.R. §725.2.

that claimant failed to establish a mistake of fact in the prior denial of benefits under Section 725.310 (2000). Accordingly, benefits were denied.

Claimant argues on appeal that the administrative law judge did not properly weigh the medical opinion evidence pursuant to Section 718.205(c). In its cross-appeal, employer contends that the administrative law judge erred in admitting the medical reports that claimant submitted just prior to the triggering of the twenty-day rule. Employer further asserts, however, that the denial of benefits should be affirmed, as the administrative law judge's findings under Section 718.205(c) are rational and supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in either appeal.

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).

With respect to the administrative law judge's consideration of the medical opinions of record pursuant to Section 718.205(c), claimant argues that the administrative law judge erred in discrediting the opinions of Drs. Kraynak and Fisk. This contention is without merit. The administrative law judge acted within his discretion as trier-of-fact in finding that Dr. Kraynak's opinion, that the miner's pneumoconiosis hastened his death, was not reasoned, as Dr. Kraynak did not adequately explain why the miner's pneumoconiosis was a factor in the decision not to perform surgery to remove the cancerous tumor in the miner's lung. Decision and Order at 9; Director's Exhibits 17, 29; Claimant's Exhibit 5; s*ee Justice v. Island Creek Coal Co*., 11 BLR 1-91 (1988). In making this finding, the administrative law judge rationally relied upon Dr. Levinson's contrary opinion, that the miner's pulmonary function was adequate to withstand surgery when his terminal hospitalization began, on the grounds that Dr. Levinson's opinion was better supported by the records from Geisinger Medical Center and that Dr. Levinson possessed superior qualifications.[3] Decision and Order at 9; Director's Exhibits 6, 18; Employer's Exhibits 4-6; s*ee Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Justice*, 11 BLR 1-91. Thus, the administrative law did not err in declining to accord determinative weight to Dr. Kraynak's opinion despite his status as the miner's

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[3] Dr. Levinson is Board-certified in Internal Medicine and Pulmonary Disease. Director's Exhibits 6, 18; Employer's Exhibits 4-6. Dr. Kraynak is Board-eligible in Family Medicine. Director's Exhibits 17, 29; Claimant's Exhibit 5.

treating physician. *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Tedesco v. Director,* OWCP, 18 BLR 1-103 (1994).

The administrative law judge also acted rationally in finding that Dr. Fisk's opinion, that a "case could be made" that the miner's anthracosilicosis was a contributing cause of his death from lung cancer, was insufficient to establish death due to pneumoconiosis pursuant to Section 718.205(c)(5). Decision and Order at 10; Claimant's Exhibit 8. The administrative law judge acted within his discretion as trier-of-fact in determining that Dr. Fisk's conclusion was equivocal. *See Justice*, 11 BLR 1-91; *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); *Carpeta v. Mathies Coal Co.*, 7 BLR 1-145 (1984).

With respect to the remainder of the medical opinion evidence, the administrative law judge determined that Drs. Scalia and Vollmer submitted documented and reasoned opinions in which they concluded that pneumoconiosis was a contributing cause of death.[4] Decision and Order at 9; Claimant's Exhibits 3, 5. The administrative law judge further found, however, that in light of his superior qualifications, Dr. Levinson's opinion, in which he indicated that pneumoconiosis played no role in the miner's death from lung cancer, outweighed the opinions of Drs. Scalia and Vollmer. Decision and Order at 9-10; Director's Exhibits 6, 18, Employer's Exhibit 6. Regarding Dr. Prince's opinion, that anthracosilicosis was a substantially contributing factor in the miner's death, the administrative law judge found that it was well-documented and reasoned. The administrative law judge stated that because Dr. Prince's "qualifications match Dr. Levinson's[,] I accord his opinion weight equal to that of Dr. Levinson." Decision and Order at 10; Claimant's Exhibit 4. In light of these findings, the administrative law judge found that the medical opinion evidence relevant to Section 718.205(c) was in equipoise and, therefore, insufficient to establish death due to pneumoconiosis. *Id.*

Claimant argues that the administrative law judge erred in mechanically relying upon the physicians' respective qualifications to resolve the conflict in their opinions regarding whether pneumoconiosis caused or contributed to the miner's demise. This contention has merit. Under the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), the administrative law judge is required to evaluate the medical opinions of record, identify conflicts in the diagnoses made by the physicians, and resolve these conflicts by reference to the documentation underlying the physicians' medical judgments in addition to factors such as the physicians' respective qualifications.

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[4] Dr. Scalia is Board-certified in Internal Medicine. Claimant's Exhibit 3. Dr. Vollmer's qualifications are not of record.

Relying solely upon qualifications without examining the substance of each opinion does not comport with the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Hall v. Director, OWCP*, 12 BLR 1-80 (1988). We vacate, therefore, the administrative law judge's findings with respect to the opinions of Drs. Levinson, Prince, Scalia, and Vollmer and remand this case to the administrative law judge for reconsideration of this evidence under Section 718.205(c).

Employer has filed a cross-appeal, contending that the administrative law judge erred in denying its request to respond to medical reports that claimant submitted shortly before the running of the twenty-day rule, set forth in Section 725.456(b)(3), which requires the parties to exchange all documentary evidence no later than twenty days before the date of the hearing. Under a cover letter dated December 10, 2002, approximately forty-two days prior to the hearing, held on January 22, 2003, claimant submitted Dr. Scalia's report. On December 13, 2002, claimant sent Dr. Prince's report to employer. Claimant submitted the reports of Drs. Kraynak and Vollmer under a cover letter dated December 23, 2002.

Employer, in a letter dated January 6, 2003, noted claimant's submission of the reports of Drs. Prince and Scalia and requested an additional thirty days within which to obtain rebuttal evidence from its expert, Dr. Levinson. Employer's Exhibit 2. In support of its request, employer noted that claimant proffered this evidence after Dr. Levinson was deposed on December 3, 2002, that the holiday season had recently ended, and that Dr. Levinson was out of town and could not be reached before mid-January. *Id.* Claimant responded, contending that employer did not establish good cause for an untimely submission of rebuttal evidence. The administrative law judge did not rule on employer's written request prior to the hearing. At the hearing, employer referred to its letter to the administrative law judge and indicated that until January 14, 2003, employer had been unable "due to the holidays," to obtain an opinion by Dr. Levinson in response to the reports submitted by claimant. Hearing Transcript at 8. Employer asked, therefore, that Dr. Levinson's report be admitted although untimely filed. The administrative law judge rejected employer's request on the ground that the evidence which employer sought to rebut had been timely submitted.[5] *Id.* at 8-9.

On appeal, employer alleges specifically that that the administrative law judge violated its right to due process by denying its request to respond to the medical reports

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[5] With respect to Dr. Fisk's report, which claimant proffered less than twenty days before the date of the hearing, the administrative law judge denied employer's motion to strike, but permitted employer to obtain an opinion from Dr. Levinson regarding Dr. Fisk's report in accordance with 20 C.F.R. §725.456(b)(4). Hearing Transcript at 12-13.

merely because they were submitted more than twenty days before the date of the hearing. This contention is without merit. An administrative law judge is granted broad discretion in resolving procedural issues, including those concerning motions for an enlargement of time within which to submit evidence. *See Clark*, 12 BLR 1-149; *Kincell v. Consolidation Coal Co.*, 9 BLR 1-221 (1986). In the present case, the administrative law judge considered the arguments made by employer in support of its request that it be permitted to obtain evidence in rebuttal to the reports of Drs. Vollmer, Kraynak, and Prince, and acted within his discretion in finding that employer did not provide sufficient grounds for granting its request. We affirm, therefore, the administrative law judge's evidentiary rulings in this case.

Accordingly, the administrative law judge's Decision and Order Denying Modification is affirmed in part and vacated in part and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge