BRB No. 97-1449 BLA

LEON L. SPICHER	)	
	)	
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 of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

Jill M. Otte (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: HALL, Chief Administrative Appeals Judge, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1512) of Administrative Law Judge Paul H. Teitler 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 adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718.[1] The administrative law judge found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Hence, the administrative law judge concluded that the evidence is insufficient to establish either a mistake in a determination of fact or a change in conditions

[1]The administrative law judge stated that "[t]he parties have stipulated to the presence of pneumoconiosis arising out of coal mine employment, eight (8) years of coal mine employment and that Claimant is totally disabled due to a respiratory impairment." Decision and Order at 2.

pursuant to 20 C.F.R. §725.310.[2] Consequently, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). The Director, Office of Workers' Compensation Programs, responds, urging 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); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[2]Claimant filed his initial claim on November 26, 1987. Director's Exhibit 43. This claim was denied by reason of abandonment by the Department of Labor on January 7, 1988. *Id*. Inasmuch as claimant did not pursue this claim any further, the denial became final. Claimant filed another claim on March 27, 1991. Director's Exhibit 1. On June 1, 1993, the administrative law judge issued a Decision and Order denying benefits, Director's Exhibit 47, which the Board affirmed in part, vacated in part, and remanded for further consideration, *Spicher v. Director, OWCP*, BRB No. 93-1757 BLA (Jan. 27, 1995)(unpub.). On September 12, 1995, the administrative law judge issued a Decision and Order on Remand denying benefits. Director's Exhibit 50. The basis of the administrative law judge's denial was claimant's failure to establish total disability due to pneumoconiosis. *Id*. Claimant filed a request for modification on September 18, 1995. Director's Exhibit 51.

Claimant contends that the administrative law judge erred in finding the newly submitted evidence insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). We disagree. Whereas Dr. Kraynak opined that claimant suffers from a totally disabling respiratory impairment due to pneumoconiosis, Claimant's Exhibit 3, Dr. Rashid opined that claimant does not suffer from a totally disabling respiratory impairment due to pneumoconiosis, Director's Exhibit 66.[3] The administrative law judge properly accorded determinative weight to the opinion of Dr. Rashid over the contrary opinion of Dr. Kraynak because of Dr. Rashid's superior qualifications.[4] *See Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). In addition, the administrative law judge properly accorded determinative weight to Dr. Rashid's opinion because he found Dr. Rashid's opinion to be better supported by the underlying documentation of record.[5] *See Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983).[6] Thus, we reject claimant's argument that the administrative law judge erred

[3]Claimant asserts that Dr. Rashid's opinion is vague and equivocal because Dr. Rashid did not provide an adequate explanation for the reversal in his opinion. The administrative law judge stated that in a report dated October 12, 1996, "Dr. Rashid...opined that Claimant has severe heart disease with some disability stemming from silicosis." Decision and Order at 4; Director's Exhibit 65. The administrative law judge also stated that "Dr. Rashid submitted a letter dated March 19, 1997 in which he further elaborates on his previous findings." Decision and Order at 4; Director's Exhibit 66. The administrative law judge observed that "Dr. Rashid further opined that had Claimant not smoked and did not have coronary artery disease, the degree of silicosis which Claimant has would not cause him any kind of disability." Decision and Order at 5. The administrative law judge also observed that "Dr. Rashid finally stated that 'silicosis, which is minimal perse [sic], has not caused any disability in this gentleman.'" *Id*. Therefore, we reject claimant's assertion that Dr. Rashid's opinion is vague and equivocal because Dr. Rashid did not provide an adequate explanation for the reversal in his opinion.

[4]The administrative law judge stated that Dr. Rashid is "Board-certified in internal medicine." Decision and Order at 4. The administrative law judge also stated that Dr. Kraynak is "Board-eligible in family medicine." *Id*.

[5]The administrative law judge stated that Dr. Rashid's "opinions are better supported by the evidence of record." Decision and Order at 6. Specifically, the administrative law judge observed that "Dr. Rashid's opinion regarding the severity of Claimant's heart disease is supported by the objective evidence of record and the discharge summaries completed by Dr. Rismiller." *Id*.

[6]Since the administrative law judge relied on the opinion of Dr. Rashid in support of a finding of no total disability due to pneumoconiosis, by inference, he found the doctor's opinion sufficiently documented and reasoned. *See Pulliam v. Drummond Coal Co.*, 7 BLR 1-846, 1-851 (1985); *Adamson v. Director, OWCP*, 7 BLR 1-229 (1984). Consequently, we

by discounting Dr. Kraynak's opinion.

Claimant also argues that the administrative law judge should have accorded determinative weight to Dr. Kraynak's opinion because he is a treating physician. While an administrative law judge may accord greater weight to the medical opinion of a treating physician, *see Onderko v. Director, OWCP*, 14 BLR 1-2 (1989), he is not required to do so, *see Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Burns v. Director, OWCP*, 7 BLR 1-597 (1984). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg, supra*; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Therefore, we affirm the administrative law judge's finding that the newly submitted evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b). Moreover, substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish a change in conditions at 20 C.F.R. §725.310.

Finally, we affirm the administrative law judge's finding that the evidence is insufficient to establish a mistake in a determination of fact at 20 C.F.R. §725.310. *See O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971); *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995); *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993). Based on his "review of the prior record," the administrative law judge properly found that claimant failed to establish a mistake in a determination of fact. Decision and Order at 6.

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

SO ORDERED.

BETTY JEAN HALL, Chief

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reject claimant's assertion that Dr. Rashid's opinion is not well documented and reasoned. As observed by the administrative law judge, Dr. Rashid's opinion is "[b]ased on the physical examination, objective studies and Claimant's social and work histories." Decision and Order at 4.

Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge