BRB No. 97-1472 BLA

GEORGE BROWN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BELLAIRE CORPORATION	)	DATE ISSUED:
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of George P. Morin, Administrative Law Judge, United States Department of Labor.

George Brown, Bellaire, Ohio, *pro se*.

John C. Artz (Polito & Smock), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (97-BLA-468) of Administrative Law Judge George P. Morin 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). This case involves a request for modification on a duplicate claim.[1] The administrative law judge considered the evidence

[1] Claimant filed his fifth claim on December 5, 1990. Director's Exhibit 1. On December 4, 1992, a Decision and Order was issued denying benefits as claimant failed to establish the existence of pneumoconiosis. Director's Exhibit 27. Claimant appealed to the Board, and then subsequently submitted evidence for consideration. Director's Exhibits 29, 31. The Board noted that some of the this evidence was already contained in the record, and therefore, returned that evidence to claimant. However, as the submission by claimant also

submitted by claimant with both his requests for modification and found that the evidence was of little probative weight. Thus, the administrative law judge found that claimant failed to establish a mistake in fact or change in conditions pursuant to 20 C.F.R. §725.310. Accordingly, benefits were denied. Claimant now challenges these findings. Employer responds, urging affirmance. The Director, Office of Worker's Compensation Programs, has indicated that he will not respond to claimant's appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

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contained new evidence, the Board advised claimant that he may seek modification by filing a request with the district director. Director's Exhibit 32. On July 13, 1995, claimant filed a petition for modification. Director's Exhibit 33. The district director issued a proposed Decision and Order denying claimant's request for modification. Director's Exhibit 37. On November 15, 1996, claimant submitted additional evidence, and after consideration of this new evidence, the district director issued another proposed Decision and Order denying modification. Director's Exhibit 39. Claimant then requested a hearing before an administrative law judge. Director's Exhibit 41.

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge properly found that Dr. Williams' September 29, 1993 letter, in which the physician clarified his earlier findings regarding three x-ray interpretations, did not constitute a diagnosis of pneumoconiosis.[2] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987). The administrative law judge rationally concluded that although Dr. Williams was claimant's treating physician, he possessed no special qualifications in interpreting x-rays and that each of the x-rays that Dr. Williams was referring to was read as negative for pneumoconiosis by one or more physicians possessing credentials as B-readers, board-certified radiologists, or both, and that none of the four radiologists who read the three x-rays found presence of the disease. *See Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Trent, supra*; *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order at 4. The administrative law judge then considered Dr. Loh's October 31, 1991 x-ray interpretation, which stated that there were no acute infiltrates or interval changes since November 15, 1989, and permissibly found that it was not a diagnosis of pneumoconiosis. *See* 20 C.F.R. §718.102; *Trent, supra*. Lastly, the administrative law judge considered Dr. Williams' November 14, 1996 medical report, in which the physician stated that claimant had been hospitalized in May 1996 for exacerbation of chronic lung disease. Dr. Williams also stated that the x-ray done during the hospitalization continued to show changes of chronic lung disease, not typical of pneumoconiosis, but in the physician's opinion, compatible with such a diagnosis. The administrative law judge pemissibly found this opinion to be unreasoned in that there were no new objective testing results presented to support Dr. William's speculative view. *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); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge therefore found that the new evidence was of little probative weight and that claimant failed to establish a basis for modification pursuant to Section 725.310. The administrative law judge is empowered to weigh the medical evidence and to draw his

[2] Dr. Williams found that none of the three x-rays was normal and indicated fibrotic changes of the lungs. The physician additionally stated that although these changes were not typical of coal workers' pneumoconiosis, they are compatible with early changes due to exposure to coal dust and impurities associated with exposure to coal dust. Director's Exhibit 33.

own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that claimant failed to establish a basis for modification pursuant to 20 C.F.R. §725.310. *See Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995).

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

REGINA C. McGRANERY
Administrative Appeals Judge