

BRB Nos. 05-0777 BLA
and 05-0777 BLA-A

LAWRENCE B. COPLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
ARCH OF WEST VIRGINIA/APOGEE)	DATE ISSUED: 03/28/2006
COAL COMPANY)	
)	
Employer/Carrier-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 Benefits of Daniel F. Solomon,
Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia,
for claimant.

Mary Rich Maloy (Jackson Kelly PLLC), Charleston, West Virginia, for
employer and carrier.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order (2004-
BLA-5854) of Administrative Law Judge Daniel F. Solomon denying benefits on a

subsequent 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 accepted the parties' stipulation of thirty-four years of qualifying coal mine employment, and determined that the claim before him, filed on August 2, 2002, was a subsequent claim subject to the provisions at 20 C.F.R. §725.309(d).¹ The administrative law judge found that the weight of the newly-submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), the element of entitlement which formed the basis of the prior denial of benefits. Consequently, the administrative law judge denied benefits pursuant to 20 C.F.R. §725.309(d), as claimant had failed to demonstrate that one of the applicable conditions of entitlement had changed since the prior denial.

On appeal, claimant contends that the administrative law judge erred in finding that the weight of the newly-submitted medical opinions was insufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer responds, urging affirmance of the denial of benefits, and cross-appeals, challenging the administrative law judge's exclusion of evidence under 20 C.F.R. §725.414 and his finding that the claim was timely filed. The Director, Office of Workers' Compensation Programs, has declined to address the merits of this appeal, but urges the Board to reject employer's arguments on cross-appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge erred in finding the weight of the newly-submitted medical opinions insufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4). Specifically, claimant maintains that the opinion of Dr. Ranavaya is reasoned, documented, and should have been credited, as this physician evaluated all of the evidence available to him and diagnosed pneumoconiosis

¹ The full procedural history with regard to claimant's earlier claims is set forth in *Copley v. Arch of West Virginia*, BRB No. 00-0267 BLA (Nov. 14, 2000)(unpub.), wherein the Board affirmed the Decision and Order of Administrative Law Judge Paul H. Teitler denying benefits on the ground that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Director's Exhibit 4. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, subsequently upheld the Board's decision. *Copley v. Director, OWCP*, No. 01-1078 (July 19, 2001)(unpub.); Director's Exhibit 4.

based on the evidence as a whole.² Claimant also asserts that the administrative law judge should have discounted the contrary opinions of Drs. Fino and Crisalli as unreasoned because these physicians improperly relied on negative x-rays to rule out the presence of pneumoconiosis. Claimant's arguments are without merit, and essentially amount to a request to reweigh the evidence, which is beyond the Board's scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

In evaluating the newly-submitted medical opinions of record, the administrative law judge accurately determined that Dr. Ranavaya's diagnosis of pneumoconiosis was based on claimant's coal mine employment history and his own positive x-ray interpretation, see Director's Exhibit 14, which the administrative law judge found unreliable in view of a better qualified physician's negative rereading of that film and the preponderance of negative x-ray interpretations of subsequent films. Decision and Order at 4-6, 9; *see generally Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993). The administrative law judge also determined that Dr. Ranavaya only referenced medical evidence obtained on October 17, 2002 and provided a cursory analysis, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*), whereas Drs. Crisalli and Fino, who found no pneumoconiosis and ruled out dust exposure in coal mine employment as a cause or aggravation of claimant's respiratory impairment, had conducted more recent examinations of claimant, considered more medical evidence, and provided more detailed analyses of the objective evidence. Decision and Order at 6-9; *see Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). Contrary to claimant's arguments, Drs. Crisalli and Fino did not simply rely on negative x-rays to rule out the presence of legal pneumoconiosis; rather, the physicians explained that the pattern of claimant's respiratory impairment was consistent with smoking and not pneumoconiosis. Director's Exhibit 21; Employer's Exhibits 2, 4, 7, 8; *see generally Kurcaba v. Consolidation Coal Co.*, 9 BLR 1-73 (1986); *Stanford v. Valley Camp Coal Co.*, 7 BLR 1-906 (1985). After finding that Drs. Crisalli and Fino possessed superior qualifications and that their opinions were more consistent with the credible objective medical evidence, the administrative law judge acted within his discretion in according little weight to Dr. Ranavaya's diagnosis of pneumoconiosis, and greater weight to the contrary opinions of Drs. Crisalli and Fino. Decision and Order

² Claimant makes the same argument with regard to the findings of the West Virginia Occupational Pneumoconiosis Board (WVOPB) contained at Director's Exhibit 11. The administrative law judge properly did not consider the WVOPB findings in weighing the newly-submitted medical opinions at 20 C.F.R. §718.202(a)(4), however, as that evidence had previously been considered in the adjudication of claimant's earlier claims, *see Director's Exhibit 4*, and thus could not establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d).

at 9; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Akers*, 131 F.3d 438, 21 BLR 2-269; *Collins*, 21 BLR 1-181. As substantial evidence supports the administrative law judge's finding that the newly-submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), we affirm his denial of benefits pursuant to 20 C.F.R. §725.309(d). Consequently, we need not reach employer's arguments on cross-appeal.

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

SO ORDERED.

NANCY. S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge