BRB No. 97-0912 BLA

WILSON H. SNYDER	)	
	)	
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 Denying Benefits Upon Modification of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Lynne G. Bressi (Law Office of Charles A. Bressi, Jr.), Pottsville, Pennsylvania, for claimant.

Helen H. Cox (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 DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits Upon Modification (96-BLA-0783) of Administrative Law Judge Ainsworth H. Brown 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). Claimant filed a request for modification of his

previously denied claim on May 5, 1995.[1] After crediting claimant with at least ten years of coal mine employment, the administrative law judge found that claimant established the existence of pneumoconiosis by x-ray evidence under 20 C.F.R. §§718.202(a)(1), and therefore also found a change in conditions established under 20 C.F.R. §725.310. The administrative law judge then found that claimant's pneumoconiosis arose out of coal mine employment under 20 C.F.R. §718.203(b). However, the administrative law judge also found that the evidence of record failed to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c). Accordingly, he denied benefits. Claimant appeals, arguing that the administrative law judge erred in his weighing of the medical evidence. The Director, Office of Workers' Compensation Programs (the Director), responds, arguing that the administrative law judge's decision is supported by substantial evidence and should be affirmed.[2]

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[1]The relevant procedural history of this case is as follows: Claimant filed his claim for Black Lung benefits with the Department of Labor on October 21, 1992. Director's Exhibit 1. The claim was finally denied by a Decision and Order issued by Administrative Law Judge Frank D. Madden on November 15, 1994. Director's Exhibit 50. Claimant requested modification of Judge Madden's denial on May 5, 1995. Director's Exhibit 51. Claimant's modification request was denied by the district director on August 19, 1995. Director's Exhibit 58. On September 19, 1995, claimant requested a hearing before the Office of Administrative Law Judges. Director's Exhibit 59. Director's Exhibit 60. Administrative Law Judge Ainsworth H. Brown conducted a hearing on the claim in Reading, Pennsylvania, on November 12, 1996. Decision and Order at 1; Hearing Transcript at 1. Judge Brown issued his decision on March 6, 1997. Decision and Order at 1.

[2]The administrative law judge found at least ten years of coal mine employment, that claimant established a change in conditions under 20 C.F.R. §725.310, and therefore a

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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to prove any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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basis for modification, and that claimant established the existence of pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202(a)(1) and 718.203(b). Inasmuch as these findings are unchallenged on appeal, they are hereby affirmed. *See Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983).

Initially, although the administrative law judge neglected to cite the applicable subsections of the regulations, he properly found that the record contained no qualifying[3] blood gas study evidence, or evidence of cor pulmonale with right sided congestive heart failure. *See* Decision and Order at 6; 20 C.F.R. §718.204(c)(2), (c)(3). Inasmuch as neither party challenges these findings, they are affirmed on appeal. *See Skrack v. Island Creek Coal Co.,* 6 BLR 1-710 (1983).

Turning to claimant's arguments on appeal, claimant contends that the administrative law judge erred in failing to find the existence of a totally disabling respiratory or pulmonary impairment under Section 718.204(c)(1) based on the pulmonary function study evidence. We disagree. The administrative law judge properly found the weight of the pulmonary function study evidence failed to establish the existence of a totally disabling respiratory or pulmonary impairment. Decision and Order at 6. In so finding, the administrative law judge permissibly credited the opinions of the reviewing physicians, who found the various qualifying tests unreliable based on the fact that they were performed with inadequate effort, over the physicians who administered the individual tests.[4] *See*

[3]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable values delineated in the tables at 20 C.F.R. 718, Appendix B, C, respectively. A "nonqualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

[4]The administrative law judge credited the opinion of Dr. Ranavaya, who reviewed the June 26, 1996, July 30, 1996 and August 15, 1996 pulmonary function studies, noting his credentials. Decision and Order at 5-6; Director's Exhibits 69-71. Additionally, the administrative law judge

Siegel v. Director, OWCP, 8 BLR 1-156 (1985)*; Bolyard v. Peabody Coal Co.,* 6 BLR 1-767 (1984); *see also Wetzel v. Director, OWCP,* 8 BLR 1-139 (1985).[5] We therefore affirm the administrative law judge's findings under Section 718.204(c)(1).

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credited the opinions of Drs. Levinson and Michos, who reviewed the March 15, 1995 test, Decision and Order at 5-6; Director's Exhibits 52, 54, and noted that Dr. Ahluwalia invalidated his own study, which was performed on June 4, 1996. Decision and Order at 5-6; Director's Exhibit 65.

[5]We note that the administrative law judge stated that Dr. Ranavaya's opinion was "more probative than Dr. Kraynak's in consideration of the spirometry certification and a specific rationale by Dr. Kraynak [sic] discussing the requirements for reproducibility." Decision and Order at 6. The second mention of Dr. Kraynak is an apparent typographical error. The administrative law judge should have referred to Dr. Ranavaya. *See* Decision and Order at 5; Director's Exhibits 69-71. Inasmuch as substantial evidence supports the administrative law judge's decision to credit Dr. Ranavaya, the errror is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Next, we turn to claimant's arguments pertaining to the administrative law judge's weighing of the medical opinion evidence to find that total disability was not established.[6] Initially, claimant argues that the administrative law judge mischaracterized Dr. Ahluwalia's opinion. Claimant contends that because the administrative law judge found the existence of pneumoconiosis and Dr. Ahluwalia did not, the administrative law judge should have found his opinion less credible under the Board's decision in *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). We disagree. While *Trujillo* stands for the proposition that an administrative law judge may accord less weight to a doctor's opinion on causation if it is based on an inaccurate diagnosis of the existence of pneumoconiosis, it does not require an administrative law judge to discredit a doctor's opinion on total disability in light of a contrary finding on the existence of pneumoconiosis. The issues of whether pneumoconiosis exists, and whether a totally disabling respiratory or pulmonary impairment exists, are two separate questions under the regulations. *See* 20 C.F.R. §§718.202(a), 718.204(c); *Trent, supra.* Claimant's assignment of error is therefore rejected.

Next, claimant contends that the administrative law judge erred in crediting the opinion of Dr. Ahluwalia based on his credentials, because he is not better qualified than Drs. Kruk and Kraynak. We disagree. In according Dr. Ahluwalia determinative weight over Drs. Kruk and Kraynak, the administrative law judge properly noted that Dr. Ahluwalia was a Board-eligible expert[7] and a laboratory director. *See Wetzel, supra*; Decision and Order at 7. Claimant also argues that Dr. Ahluwalia did not account for his qualifying pulmonary function study, his finding of hypoxemia, or his positive x-ray in issuing his opinion. We reject claimant's contentions as little more than a request to re-weigh the evidence. *See Anderson v. Valley Camp of Utah, Inc.,* 12 BLR 1-111 (1989). The determination of whether a doctor's opinion is documented and reasoned is for the administrative law judge to make. *See Clark v. Karst-Robbins Coal Co.,* 12 BLR 1-149 (1989)*(en banc).* In the case at hand, Dr. Ahluwalia specifically found his own pulmonary function study invalid due to poor effort by claimant. *See* Director's Exhibit 65. Additionally, while the doctor's x-ray was initially read as positive, it was re-read by a physician with superior credentials as negative. *See Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *see also Wetzel, supra*; Director's Exhibits 57, 63, 65, 66. Contrary to

[6]Although the administrative law judge neglected to cite the applicable regulation for his analysis of the medical opinion evidence, his findings are relevant at 20 C.F.R. §718.204(c)(4). *See Campbell v. Director, OWCP,* 12 BLR 1-16 (1987).

[7]The record reveals that Dr. Ahluwalia is Board Eligible in Internal Medicine. Director's Exhibit 68.

claimant's contention, therefore, the administrative law judge acted within the bounds of his discretion as the trier-of-fact in weighing Dr. Ahluwalia's opinion, and his findings are hereby affirmed. *See Kuchwara v. Director, OWCP,* 7 BLR 1-167 (1984); *see also Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986).

Next, claimant contends that the administrative law judge possibly exhibited bias against Dr. Kraynak because the administrative law judge found the doctor's statements regarding his administration of several pulmonary function studies to be "self-serving." Additionally, claimant contends that the administrative law judge mischaracterized Dr. Kraynak's opinion by stating that he did not relate his latest physical findings, and by not discussing the fact that Dr. Kraynak was the only physician to assess the entire record. We disagree. Initially, we reject claimant's allegation of bias on the part of the administrative law judge in the absence of any supporting evidence. *See Marcus v. Director, OWCP*, 548 F.2d 1044, 1050 (D.C. Cir. 1976); *Zamora v. C. F. & I Steel Corp.,* 7 BLR 1-568 (1984); *see also* 20 C.F.R. §725.352. Additionally, contrary to claimant's argument, the administrative law judge properly noted that Dr. Kraynak did not relate his physical findings in his latest deposition. *See* Decision and Order at 7; Claimant's Exhibit 15. Accordingly, claimant's arguments are rejected, and we affirm the administrative law judge's decision to discredit Dr. Kraynak's opinion. *See Mabe, supra; Kuchwara, supra.*

Finally, claimant argues that the administrative law judge mischaracterized Dr. Kruk's opinion as unsupported by objective data. We disagree. The administrative law judge properly discredited Dr. Kruk's opinion in light of his reliance on an invalidated pulmonary function study. *See Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Baker, supra*; Decision and Order at 6. Inasmuch as claimant raises no further arguments regarding the administrative law judge's weighing of the medical evidence, his findings pursuant to 20 C.F.R. §718.204(c)(4), as well as his finding that claimant failed to establish the existence of a totally disabling respiratory or pulmonary impairment under Section 718.204(c), are affirmed. *See Director, OWCP v. Greenwich Collieries [Ondecko],*114 S.Ct. 2251, 18 BLR 2A-1 (1994); *see also Skrack, supra*. In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of a totally disabling respiratory or pulmonary impairment under Section 718.204(c), a requisite element of entitlement, we affirm his denial of benefits under Part 718. *See Trent, supra; Perry, supra*.

Accordingly, the administrative law judge's Decision and Order Denying Benefits Upon Modification is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge