BRB No. 97-1161 BLA

JOHNNIE STANLEY	)	
	)	
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 of Donald B. Jarvis, Administrative Law Judge, United States Department of Labor.

Lawrence L. Moise, III (Vinyard & Moise), Abington, Virginia, for the claimant.

Jennifer U. Toth (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, Co-Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, Johnnie Stanley, appeals the Decision and Order -- Denying Benefits (96-BLA-1387) of Administrative Law Judge Donald B. Jarvis rendered on a claim filed pursuant to the provisions of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Benefits under the Act are awarded to persons who are totally disabled due to coal worker's pneumoconiosis. 30 U.S.C. §901(a); *see Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 141, 11 BLR 2-1, 2-5 (1987), *reh'g denied*, 484 U.S. 1047 (1988).

This claim is before the Board for the third time.[1] The instant appeal necessitates review of

[1]The extensive procedural history of this claim is set forth in the administrative law judge's Decision and Order and in prior decisions of the Board and of the United States Court of Appeals for the Fourth Circuit, which upheld the Board's affirmance of an administrative law judge's earlier

the administrative law judge's denial of claimant's petition for modification, in which the administrative law judge concluded that claimant failed to prove either a mistake in determination of fact or a change in condition. The administrative law judge specifically found that claimant failed to establish invocation of the interim presumption,[2] and also determined that claimant did not establish entitlement under the permanent criteria set forth at 20 C.F.R. Part 410, Subpart D. Decision and Order -- Denying Benefits at 14-16, 18. Benefits were again denied, and claimant brought this appeal. In response to claimant's appeal, the Director, Office of Workers' Compensation Programs (Director), urges that the Board affirm the Decision and Order.

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denial of benefits in this claim, which was initially filed with the Social Security Administration (SSA) under Part B of the Act in 1971. DX-1; *see Stanley v. Director, OWCP*, BRB No. 84-2146 BLA (Aug. 29, 1986)(unpub.) and *Stanley v. Director, OWCP*, BRB No. 87-3044 BLA (Apr. 27, 1990)(unpub.), *aff'd* No. 92-1453 (4th Cir. Mar. 22, 1993). DXs-50, 51. This matter is currently before the Board on appeal of the administrative law judge's denial of claimant's petition for modification pursuant to Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 922, as incorporated by 30 U.S.C. § 932(a) and implemented by 20 C.F.R. § 725.310. *See Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

[2]The interim criteria govern the evaluation of the evidence in this claim, which was reviewed by the Department of Labor pursuant to Section 435 of the Act, 30 U.S.C. § 945. 20 C.F.R. § 727.2(a).

On appeal, claimant challenges the administrative law judge's finding that he failed to invoke the interim presumption pursuant to Section 727.203(a)(4). Claimant specifically takes issue with the administrative law judge's rejection of the medical opinions of Drs. Smiddy, DXs-30, 53, 59, 70 and Winegar, DX-71, as well as his reliance on the conflicting opinions of Dr. Paranthaman, DXs-6, 34, and 72,[3] to find that claimant failed to establish the presence of a totally disabling pulmonary or respiratory impairment so as to invoke the interim presumption at Section 727.203(a)(4).

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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). Upon consideration of the Decision and Order of the administrative law judge, the arguments raised on appeal, and of the administrative record as a whole, we conclude that the Decision and Order -- Denying Benefits on modification is supported by substantial evidence and contains no reversible error.

Claimant has failed to demonstrate reversible error in the administrative law judge's consideration of the record evidence, especially the medical opinions of Drs. Smiddy, Miller, Paranthaman and Winegar. The administrative law judge reasonably found that Dr. Smiddy's various opinions were unpersuasive. He was entitled to discount the 1993 disability opinion, DX-53, because of Dr. Smiddy's reliance on the results of a 1982 arterial blood gas test, DX-30, a clinical test which was found to have diminished weight because of its age. *See Milburn Colliery Co. v. Hicks*, No. 96-2438, 1998 WL 95275 at *3 (4th Cir. Mar. 6, 1998); *Gray v. Director, OWCP*, 943 F.2d 513, 520-21, 15 BLR 2-214, 2-225 (4th Cir. 1991). The administrative law judge also rationally found that Dr. Smiddy's latest opinions, DX-70, which were presented in letters dated May 10 and December 5, 1995, were unreasoned and undocumented. The administrative law judge reasonably criticized Dr. Smiddy's failure in the former report to explain an acknowledged improvement in claimant's chest x-ray and arterial blood gas test results over results obtained in 1982. Further, the administrative law judge permissibly discounted the value of Dr. Smiddy's December 5, 1995 letter report because the doctor did not disclose the clinical tests or findings which formed the basis for his opinion.[4]

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[3]We affirm the administrative law judge's findings that claimant failed to trigger the interim presumption pursuant to 20 C.F.R. § 727.203(a)(1)-(3), and that the evidence would not establish rebuttal, 20 C.F.R. § 727.203(b), as unchallenged on appeal. *Skrack v. Island Creek Coal* Co., 6 BLR 1-710, 1-711 (1983); *see C.G. Willis, Inc. v. Director, OWCP*, 31 F.3d 1112, 1116, 28 BRBS 84, 87 (CRT) (11th Cir. 1994). With regard to Section 727.203(a)(4), claimant does not contest the administrative law judge's evaluation of any medical reports other than those of Drs. Miller, Paranthaman, Smiddy and Winegar. In its decision in this case, the Fourth Circuit concluded that Dr. Miller's report was irrelevant to the issue of total respiratory disability at Section 727.203(a)(4) because he did not make a finding of respiratory capacity. *Stanley v. Director, OWCP*, No. 92-1453, slip op. 4-5 (4th Cir. Mar. 22, 1993).

[4]In his latest letter, dated December 5, 1995, Dr. Smiddy acknowledged that he had "no

knowledge as to [claimant's] current state of health" because he had not seen claimant since May 10 of that year, when he had acknowledged that "it appears that [claimant] has improved both in the appearance of his chest x-ray and his PO2 ... [and recommended that] follow-up ABGs and PFTs are suggested." DX-71. Claimant also argues that the administrative law judge failed to consider the results of Dr. Paranthaman's "partially qualifying" 1996 pulmonary function study in evaluating Dr. Smiddy's opinion at Section 727.203(a)(4). The administrative law judge was not bound to consider the 1996 test, which was recorded after Dr. Smiddy rendered his opinion and which is not relevant to gauging the sufficiency of Dr. Smiddy's 1995 opinions. While claimant is correct in that the administrative law judge did not address the fact that Dr. Smiddy on May 10, 1994 cited the qualifying January, 1987 pulmonary function values recorded by Dr. Robinette, DX-67, this oversight is harmless error, given the administrative law judge's finding that Dr. Paranthaman's medical opinion and credentials are entitled to most weight. Further, the administrative law judge weighed Dr. Robinette's pulmonary function study along with other tests at Section 727.203(a)(2), and permissibly credited the 1996 non-qualifying study administered by Dr. Paranthaman as most probative because it most accurately reflected the current state of claimant's pulmonary condition. Decision and Order at 15; *see Milburn Colliery Co. v. Hicks*, No. 96-2438, 1998 WL 95275 at *3 (4th Cir. Mar. 6, 1998).

The administrative law judge rationally discounted Dr. Winegar's opinion, DX-71, as insufficient to establish total respiratory disability, for while Dr. Winegar found that claimant was totally disabled, he did not render an assessment of a totally disabling pulmonary or respiratory impairment, as is required at Section 727.203(a)(4). Dr. Winegar's assessment of disability based on multiple factors, without an assessment of total respiratory disability, is insufficient to raise the interim presumption.[5] *See Mullins*, 484 U.S. at 143, 11 BLR at 2-5. More importantly, the

[5]Dr. Winegar reported that claimant "has been disabled since about 1978 due to multiple factors," concluded that claimant "does have emphysema which more likely than not is the result of coal worker's pneumoconiosis [related to coal mining because claimant has no other exposure]," and stated that

> [claimant] is unable, from a respiratory capacity as well as other multiple factors to return to his previous work as a coal miner. It is also my opinion that he is 100% disabled from multiple factors including coal miner's pneumoconiosis, atherosclerotic heart disease, non-insulin dependent diabetes mellitus and previous back injury.

administrative law judge permissibly credited the medical opinions of Dr. Paranthaman, DXs-6, 34, 72, finding his conclusion, that claimant did not suffer from a totally disabling pulmonary or respiratory impairment, to be "well-reasoned and documented." Dr. Paranthaman administered non-qualifying arterial blood gas and pulmonary function tests, a chest x-ray, EKG, exercise tests and has examined claimant on two occasions. DXs-6, 34, 72. The administrative law judge also acknowledged Dr. Paranthaman's superior credentials as board certified in internal and pulmonary medicine.[6] Decision and Order at 16; DX-35. As was recently observed by the Fourth Circuit, "experts' respective qualifications are important indicators of the reliability of their opinions." *Hicks*, 1998 WL 95275 at *9. The administrative law judge provided an adequate rationale for crediting Dr. Paranthaman's opinions over conflicting opinions of record.[7]

The administrative law judge is charged with the evaluation and weighing of the medical evidence, and is not bound to accept the opinion or theory of any medical expert. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997). In order to gauge the

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DX-71.

[6]In its affirmance of the Board's initial opinion in this case, the Fourth Circuit observed that "Dr. Paranthaman's credentials are very extensive." *Stanley*, No. 92-1453, slip op. at 5. The court also observed that Dr. Smiddy's qualifications were not in evidence, and questioned the reliability of Dr. Smiddy's opinion on this basis. *Id.*

[7]We disagree with claimant that Dr. Paranthaman's opinion is flawed because the FEV1 trial of the non-qualifying test administered by him fell below the FEV1 standard set forth at Section 727.203(a)(2). The interpretation of medical tests lies with the medical expert, and Dr. Paranthaman's notation, that the study was within "normal limits" does not undermine the credibility of his opinion that claimant does not suffer from a totally disabling pulmonary or respiratory impairment. The administrative law judge may not set his own expertise against that of a physician by independently reviewing the significance of this "non-qualifying" clinical test. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986).

probative value of medical opinions, the administrative law judge should consider their quality, *viz*. the qualifications of the medical experts, the documentation which informs their opinions and the quality of their reasoning and analysis. *See id*.; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). The administrative law judge discharged his obligation in this case by inquiring into the sufficiency of the documentation upon which claimant's experts relied in presenting their assessments, the adequacy of the reasoning employed by them from the objective clinical facts before them, and the certainty of their opinions. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Rowe*. Because the administrative law judge's evaluation of the medical opinions is not "inherently incredible or patently unreasonable," *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied* 440 U.S. 911 (1979), and because Dr. Paranthaman's opinions provide substantial evidence to support the administrative law judge's finding that claimant failed to demonstrate a change in condition or mistake in determination of fact, we uphold the denial of claimant's petition for modification, and thus affirm the denial of benefits in this case.

Accordingly, we affirm the Decision and Order -- Denying Benefits on modification.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge