

BRB No. 03-0713 BLA

ALBERT W. WOLFGANG)
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED: 05/13/2004
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

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

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (2002-BLA-00436) of Administrative Law Judge Ralph A. Romano rendered 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).¹ When this case was first before the administrative law judge, he adjudicated the claim pursuant to 20 C.F.R. Part 718 based

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

on the filing date, he credited claimant with twenty years and two months of qualifying coal mine employment, and found the evidence sufficient to establish the existence of pneumoconiosis, but insufficient to establish total respiratory disability. Accordingly, benefits were denied. Thereafter, claimant filed a petition for modification, with supporting evidence, on April 5, 2002. Director's Exhibit 36. Pursuant to claimant's request for modification, the administrative law judge reviewed all of the evidence, reiterated his findings of twenty-two years of coal mine employment, that the existence of pneumoconiosis was established, and that claimant failed to establish total respiratory disability. He also stated that claimant failed to establish disability was due to pneumoconiosis. He found, therefore, that claimant failed to establish a basis for modification of the denial of his claim. Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in rejecting the well-reasoned, well-documented opinion of Dr. Kraynak, one of claimant's treating physicians, and that the administrative law judge erred in finding that total respiratory disability due to pneumoconiosis was not established. The Director, Office of Workers' Compensation Programs, (the Director) responds, urging affirmance of the denial of benefits inasmuch as the administrative law judge properly weighed the evidence of record in finding that total respiratory disability was not established.

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge committed reversible error in rejecting the opinion of Dr. Raymond Kraynak, a treating physician, who submitted a well-reasoned and well documented report, and who was the only physician to review the results of multiple examinations and diagnostic studies. In assessing the medical opinion evidence submitted in support of the request for modification along with the evidence submitted in support of the previously denied claim, the administrative law judge determined that Dr. Kraynak's opinion, that claimant was totally and permanently disabled due to coal workers' pneumoconiosis, was not well-reasoned because Dr. Kraynak merely reiterated prior statements he had made regarding claimant's pulmonary condition; and he stated that claimant's pulmonary condition was getting worse without making specific findings supporting that opinion. Decision and Order at 9. Instead, the administrative law judge found Dr. Rashid's conclusions well-supported and well-reasoned since his conclusions were supported by the objective laboratory studies, and

because he possessed superior credentials.² This was rational. 20 C.F.R. §718.104(d)(5); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Beatty v. Danri Corp.*, 49 F.3d 993, 19 BLR 2-136 (3d Cir. 1995), *aff'g* 16 BLR 1-11 (1991); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 22 BLR 2-311 (7th Cir. 2001); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *Church v. Eastern Association Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Taylor v. Director, OWCP*, 9 BLR 1-22 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). We, therefore, affirm the administrative law judge's finding that the opinion of Dr. Rashid, that claimant was not disabled from a respiratory condition, was well-reasoned and documented and more credible than the opinion of Dr. Kraynak. *See Trumbo, supra; King, supra; Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 8, 9. The administrative law judge's weighing of the medical opinion evidence and finding that claimant failed to establish total respiratory disability are, therefore, affirmed. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*).

² Dr. Kraynak is Board eligible in family medicine. Dr. Rashid is Board-certified in internal medicine. Claimant's Exhibit 4; Director's Exhibit 43; Decision and Order at 5-6.

The administrative law judge found that all of the pulmonary function and blood gas studies of record were non-qualifying. Decision and Order at 7-8.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge