BRB No. 02-0371 BLA

JOSEPH J. SEEDOR	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED:_____
	)	
	)	
Respondent	)	
		DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Modification of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Kentucky, for claimant.

Rita Roppolo (Eugene Scalia, Acting 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: SMITH, HALL and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits on Modification (01-BLA-0021) 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).[1] This case has an

[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.

extensive procedural background. Claimant filed his application for benefits on July 8, 1980. Director's Exhibit 1. In a Decision and Order – Denial of Benefits issued on May 9, 1985, Administrative Law Judge Frank J. Marcellino found that the Director, Office of Workers' Compensation Programs (the Director), conceded that claimant suffered from pneumoconiosis. After crediting claimant with fifteen years of coal mine employment, Judge Marcellino found the evidence sufficient to establish that claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b)(2000). Finding the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(2000), Judge Marcellino denied benefits.

On appeal, the Board affirmed the denial of benefits. *Seedor v. Director, OWCP*, BRB No. 85-1392 BLA (Dec. 29, 1987)(unpub.). Claimant then filed a request for modification of the denial of benefits. 20 C.F.R. §725.310(2000). In a Decision and Order – Denying Benefits issued on September 4, 1990, Administrative Law Judge Ainsworth H. Brown (the administrative law judge) found that claimant failed to establish total disability pursuant to Section 718.204(c)(2000) and a change in conditions pursuant to Section 725.310(2000). Accordingly, the administrative law judge denied benefits. On appeal, the Board affirmed the administrative law judge's denial of benefits. *Seedor v. Director, OWCP*, BRB No. 91-1795 BLA (Sept. 17, 1993)(unpub.).

Claimant filed a second request for modification. In a Decision and Order – Denying Benefits issued on April 17, 1996, the administrative law judge found that claimant waived consideration of the issue of whether there was a mistake in a determination of fact under Section 725.310(2000). The administrative law judge found the newly submitted medical evidence insufficient to establish total disability pursuant to Section 718.204(c)(2000), and denied benefits. On appeal, the Board affirmed the administrative law judge's denial of benefits. *Seedor v. Director, OWCP*, BRB No. 96-1017 BLA (July 21, 1997)(unpub.).

Claimant filed a third request for modification. In a Decision and Order Denying Petition for Modification issued on September 24, 1999, the administrative law judge stated that claimant waived consideration of the question of whether there was a mistake in a determination of fact under Section 725.310(2000). The administrative law judge considered the newly submitted medical evidence and found it insufficient to establish total disability pursuant to Section 718.204(c)(2000). Accordingly, the administrative law judge denied benefits. Claimant appealed to the Board, *see* Director's Exhibit 116, but, subsequently, requested that the Board remand the case to the district director so he could pursue modification, Director's Exhibit 120. On February 2, 2000, the

Board issued an Order granting claimant's Motion to Dismiss, and the case was remanded to the district director. Director's Exhibit 121.

The administrative law judge subsequently reviewed the evidence of record and found that there was no mistake in a determination of fact. The administrative law judge then considered all of the newly submitted medical evidence, found it insufficient to establish the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b), and denied benefits.

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[2] The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c)(2000), is now found at 20 C.F.R. §718.204(b), while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b)(2000), is now found at 20 C.F.R. §718.204(c).

Claimant appeals, challenging the administrative law judge's finding that there is no mistake in a determination of fact and the administrative law judge's weighing of the newly submitted evidence under Section 718.204(b)(2)(i) and (iv). The Director responds, urging affirmance of the administrative law judge's denial of benefits.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.,* 380 U.S. 359 (1965).

Initially we consider claimant's challenge to the administrative law judge's finding that there are no grounds for modification based on a mistake in a determination of fact. Claimant asserts that the administrative law judge erred by failing to review all of the evidence of record in addressing the issue of a mistake in a determination of fact. Further, claimant contends that the administrative law judge's findings in this regard do not comport with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

The administrative law judge stated that his decision was:

> based on a *de novo* review and consideration of the administrative record as a whole. Not all of the evidence that has been introduced prior to the instant request for modification, and was set forth in the prior Decisions and Orders, however, will again be set out in this decision except as required for an analysis of the current request for modification….I incorporate by reference the listing of the relevant exhibits in the prior decisions by administrative law judges and the Benefits Review Board.

2001 Decision and Order at 5, n.5 (citation omitted). The administrative law judge then summarized the newly submitted evidence, and stated that "after a *de novo* review of the record, I am not persuaded that Claimant has proven that there is a mistake in a determination of fact." 2001 Decision and Order at 9.

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[3] The administrative law judge's findings that the newly submitted evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii) and (iii), are unchallenged on appeal, and are therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

We disagree with claimant's assertion that the administrative law judge's finding does not comport with the APA. The administrative law judge indicated that he had reviewed all of the evidence of record, and we hold that his conclusion that there has been no mistake in a determination of fact satisfies the requirements of the APA. *See generally Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

Next, we turn to claimant's assertions regarding the administrative law judge's consideration of the pulmonary function study evidence pursuant to Section 718.204(b)(2)(i). The record contains reports of four newly submitted pulmonary function studies. The administrative law judge considered each study individually, and our decision will do so as well. The administrative law judge concluded that the January 3, 2001 pulmonary function study "is not a reliable indicator of Claimant's pulmonary or respiratory status." 2001 Decision and Order at 10. The administrative law judge relied upon Dr. Sherman's invalidation of this test, due to poor effort by claimant, based on Dr. Sherman's superior credentials. The administrative law judge also stated:

> While I accept Dr. Matthew Kraynak's rebuttal to Dr. Sherman's statement, that the tracings were of insufficient duration, because the six second duration is not required by the pre-amended regulations, I find that Dr. Sherman's alternative grounds for invalidating the test – poor performance effort – is sufficient to undermine the reliability of this study.

Decision and Order at 10 (citation omitted).

Claimant challenges Dr. Sherman's invalidation opinion, noting that the regulations require a five second plateau, while Dr. Sherman expected a six second plateau. Claimant also contends that Dr. Sherman's opinions should be rejected because he did not explain his comments regarding poor effort and non-reproducibility.

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[4] The administrative law judge's finding that the June 13, 2000 pulmonary function study, which yielded qualifying results, is a reliable study, is not challenged on appeal, and therefore, this finding is affirmed. *See Skrack, supra*.

Dr. Matthew Kraynak administered the January 3, 2001 pulmonary function study. This study yielded qualifying results. Claimant's Exhibit 6. The test results were validated by Drs. Matthew and Raymond Kraynak, Claimant's Exhibits 9, 10, and were invalidated by Dr. Sherman who opined that there was less than optimal effort, cooperation and comprehension. Dr. Sherman noted poor effort, that the results were not reproducible, and that there was less than six seconds without a two second plateau. Director's Exhibit 137.

Initially, we reject claimant's assertion regarding the six second plateau, since the administrative law judge indicated that he was not relying on this portion of Dr. Sherman's opinion, as it was not in accord with the regulations. Decision and Order at 10. The Board has held that the opinions of consulting physicians regarding the reliability of pulmonary function studies may constitute substantial evidence for the rejection of qualifying studies. *See Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). Because the administrative law judge provided a proper rationale for crediting the opinion of Dr. Sherman over the contrary opinions of Drs. Kraynak, *i.e.,* that he found the credentials of Drs. Sherman were superior to those of Dr. Matthew Kraynak, *see Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), the administrative law judge acted within his discretion as the finder-of-fact, in relying upon Dr. Sherman's opinion to conclude that the January 3, 2001 pulmonary function study was not reliable. Inasmuch as Dr. Matthew Kraynak is Board-certified in Family Medicine, and Dr. Raymond Kraynak is only Board-eligible in Family Medicine, we hold that the administrative law judge's failure to consider Dr. Raymond Kraynak's validation opinion does not constitute reversible error. In view of our affirmance of the administrative law judge's reliance on Dr. Sherman's opinion based on his superior qualifications as a physician Board-certified in Internal Medicine and Pulmonary Disease, the outcome on this point is foreordained, and remand for consideration of Dr. Raymond Kraynak's validation opinion is therefore unnecessary. *See Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Regarding the March 29, 2000 pulmonary function study, the administrative law judge deferred to Dr. Sahillioglu's invalidation of the pulmonary function study. The administrative law judge found that Dr. Sahillioglu's credentials, as a physican Board-eligible in Internal Medicine and Pulmonary Disease, were superior to those of Dr. Matthew Kraynak, who is Board-certified in Family Medicine. The administrative law judge also stated that he credited Dr. Sahillioglu's reasoning that the test showed very poor and inconsistent effort, but that he would not credit Dr. Sahillioglu's reasoning that the inspiratory effort must be demonstrated. 2001 Decision and Order at 10-11.

Claimant asserts that the administrative law judge must provide a rationale for preferring the opinion of a consulting physician over an administering physician, and contends that the administrative law judge did not indicate what weight he accorded Dr. Matthew Kraynak's notation of good cooperation and comprehension. Claimant asserts that Dr. Sahillioglu's opinion is not explained and claimant maintains that the administrative law judge erred by crediting Dr. Sahillioglu's conclusions of poor and inconsistent effort. Claimant asserts that Dr. Sahillioglu's conclusions are based on requirements which are not imposed by the regulations. Further, claimant asserts that Dr. Matthew Kraynak has credentials which are superior to Dr. Sahillioglu's credentials, and therefore that the administrative law judge has not provided a valid basis for preferring the opinion of Dr. Sahillioglu. Finally, claimant asserts that the administrative law judge did not consider Dr. Raymond Kraynak's deposition testimony regarding this pulmonary function study, and that this failure to consider all of the evidence requires remand.

Dr. Matthew Kraynak administered the March 29, 2000 pulmonary function study which yielded qualifying values, and noted that claimant had good cooperation and comprehension. Director's Exhibit 123. Dr. Sahillioglu invalidated the results of this test, finding less than optimal effort, cooperation and comprehension, and noting that the studies were improperly performed. Specifically, Dr. Sahillioglu found that there was no demonstration of inspiratory effort, that there was extremely poor and inconsistent effort on the FVC and the MVV. Dr. Sahillioglu indicated that the restrictive defect needed to be verified by a TLC determination and suggested that a flow value loop study be administered for verification. Director's Exhibit 123. Dr. Raymond Kraynak stated that this pulmonary function study is valid. Claimant's Exhibit 9.

To the extent that Dr. Sahillioglu found that this pulmonary function study was invalid because it showed insufficient effort by claimant and it fails to demonstrate inspiratory effort, the administrative law judge permissibly relied upon Dr. Sahillioglu's opinion as being consistent with the standards for the administration and interpretation of pulmonary function tests set out in Appendix B of the Part 718 regulations. *See* 20 C.F.R. Part 718, Appendix B (2000); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987). Moreover, we affirm the administrative law judge's reliance upon the opinion of Dr. Sahillioglu, who is Board-eligible in Internal Medicine and Pulmonary Diseases, over the opinion of Dr. Matthew Kraynak, who is Board- certified in Family Medicine, based on the administrative law judge's finding that Dr. Sahillioglu possesses superior credentials. *See Worley, supra*. Finally, although the administrative law judge did not consider Dr. Raymond Kraynak's validation of this pulmonary function study, *see* Claimant's Exhibit 9 at 6, we hold that this omission does not constitute reversible error. Since Dr. Matthew Kraynak's qualifications as a physician Board-certified in Family Medicine are superior to Dr. Raymond Kraynak's Board-eligibility in Family Medicine, and since we have affirmed the administrative law judge's reliance on Dr. Sahillioglu's superior qualifications, we hold that the outcome on this point is foreordained, and that remand is unnecessary. *See Keating, supra*; *Larioni, supra.*

The administrative law judge credited Dr. Ahluwalia's interpretations of the July 11, 2000 pulmonary function study. The administrative law judge stated:

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[5] The applicable standards provide that the patient be instructed to make a full inspiration, either from the spirometer or the open atmosphere, using a normal breathing pattern, and then to blow into the apparatus, without interruption, as hard, fast, and completely as possible. 20 C.F.R. Part 718 Appendix B(2)(ii)(2000). The standards further provide that effort shall be judged unacceptable when the patient has not reached full inspiration preceding the forced expiration. 20 C.F.R. Part 718 Appendix B(2)(ii)(A)(2000). These regulations are applicable in the instant case, as all of the pulmonary function study evidence was developed prior to January 19, 2001. *See* 20 C.F.R. §718.101(b).

[6] As previously noted, Dr. Sahillioglu is Board-eligible in Internal Medicine and Dr. Matthew Kraynak is Board-certified in Family Medicine. Inasmuch as Dr. Sahillioglu's credentials are in a more relevant medical specialty, the administrative law judge did not err in finding them "superior" in this case.

> I have carefully considered Dr. Kraynak's view that the flow-volume tracings for this test were erratic and the study as a result is invalid, but I am not persuaded by this assessment because he does not explain how this defect would result in spurious high values. I am also impressed by Dr. Ahluwalia's explicit analysis of the results of this test, and will defer to his view as to the significance of the FEV1 and FVC results.

Decision and Order at 10. Consequently, the administrative law judge found that this test is in substantial compliance with the regulations and is reliable. *Id.*

Claimant asserts that while Dr. Ahluwalia never specifically stated that the results of this test were valid, Dr. Raymond Kraynak was clear that this pulmonary function study was invalid. Further, claimant asserts that the administrative law judge's reliance on this test was not adequately explained. Claimant contends that the administrative law judge substituted his opinion for that of the physician in relying on Dr. Ahluwalia's opinion. Claimant also challenges the administrative law judge's characterization of Dr. Raymond Kraynak's opinion and contends that, contrary to the administrative law judge's finding, Dr. Raymond Kraynak details the bases for his invalidation of this study. Claimant asserts that the administrative law judge applied a more onerous standard on claimant's physicians, contending that the explanations of Drs. Sherman and Sahillioglu were credited on the January 3, 2001 pulmonary function study and the March 29, 2000 pulmonary function study despite being incomplete, while the administrative law judge did not accept Dr. Raymond Kraynak's opinion on this matter. Claimant notes that Dr. Ahluwalia is not Board-certified in any field, and contends that there is no reason for the administrative law judge to find that this non-qualifying study is in substantial compliance with the regulations.

Dr. Ahluwalia administered the July 11, 2000 pulmonary function study, which yielded non-qualifying results. Dr. Ahluwalia stated "Normal FEV1 and FVC suggestive of normal pulmonary functions except for small airways involvement as evidenced by decreased FEF25-75 of 28% predicted." Director's Exhibit 133. The results of this pulmonary function study were invalidated by Dr. Raymond Kraynak, who noted erratic flow loops, which he stated would indicate coughing, technical problems or that additional air was inserted into the machine. Dr. Raymond Kraynak stated "[t]his would invalidate the study, giving rise to values that would be higher than normally obtained if proper technique was used." Claimant's Exhibit 9 at 8. The administrative law judge stated:

> I will draw the inference [from Dr. Ahluwalia's comments] that his specific reference to the test results in these terms—addressing the 'normal flows' where Dr. Kraynak has contested the reliability of the flow-loops—indicates an opinion as to their reliability by Dr. Ahluwalia, and find that this test is in substantial compliance with the Secretary's regulations.

Decision and Order at 12, n.11.

We hold the administrative law judge, who is charged with evaluating the evidence and drawing inferences therefrom, *see Lafferty v. Cannelton Industries, Inc.,* 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), reasonably determined that Dr. Ahluwalia's opinion is that the July 11, 2000 pulmonary function study is valid. The Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149(1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Moreover, we hold that the inference drawn by the administrative law judge regarding Dr. Ahluwalia's interpretation of the July 11, 2000 pulmonary function study is not patently unreasonable or inherently incredible, *see Cordero v. Triple A Machine Shop,* 580 F.2d 1331, 1335 (9th Cir. 1978), and, therefore, that the administrative law judge's finding in this regard is permissible. *See Lafferty, supra*; *Fagg, supra*. We reject claimant's assertion that the administrative law judge erred by finding that Dr. Kraynak did not set forth the reasons for finding the pulmonary function study invalid and affirm the administrative law judge's finding that Dr. Kraynak did not explain his opinion that "the defect [he noted] would result in spurious high values." Decision and Order at 10; *see* Claimant's Exhibit 9. Further, since the administrative law judge did not rely on the qualifications of the physicians as a determining factor in his weighing of the evidence regarding this pulmonary function study, claimant's assertion regarding qualifications is misplaced. We also reject claimant's contention that the administrative law judge applied a different and more onerous standard to Dr. Kraynak's opinion regarding the July 11, 2000 pulmonary function study, than the administrative law judge applied to the opinions of Drs. Sherman and Sahillioglu regarding other studies. In the other situations, the administrative law judge did not credit the portions of the invalidation opinions of Drs. Sahillioglu and Sherman that were based upon criteria not contained in the regulations, *see* Decision and Order at 10-11; discussion *supra*, but still found that these physicians provided valid bases for their opinions. Conversely, the administrative law judge was not persuaded by the opinion of Dr. Raymond Kraynak regarding the July 11, 2000 pulmonary function study, because the administrative law judge found that Dr. Raymond Kraynak did not explain his opinion concerning the "spurious high values." Decision and Order at 10.

We therefore affirm the administrative law judge's findings regarding the reliability of each individual pulmonary function study. In addition, we affirm the administrative law judge's finding that claimant has not satisfied his burden of demonstrating, by a preponderance of the evidence, total disability by means of the pulmonary function study evidence since, as the administrative law judge found, the record contains the results of one valid qualifying pulmonary function study and one valid non-qualifying pulmonary function study. *See* 20 C.F.R. §718.204(b)(2)(i); *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

We now turn to claimant's assertions regarding the administrative law judge's evaluation of the medical opinion evidence relevant to total disability pursuant to Section 718.204(b)(2)(iv). Claimant asserts that the administrative law judge erred in finding that the medical opinion evidence is insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv).

In finding the medical opinion evidence insufficient to establish total disability the administrative law judge stated:

> I will defer to the opinion of Dr. Ahluwalia as better supported by clinical testing and his medical findings. Dr. Matthew Kraynak's report is extensive, but he relies in part on a pulmonary function test that has been invalidated. Dr. Raymond Kraynak's opinion incorporates the results of a valid, qualifying study. Nevertheless, I will credit Dr. Ahluwalia's qualifications as board-eligible internist over Dr. Raymond Kraynak's board-eligibility in family medicine. Also, I find Dr. Ahluwalia's report to [be] more thorough and complete than that of Dr. Raymond Kraynak, his opinion is based on clinical testing, including an exercise test, and his conclusions supported in part by the non-qualifying ventilatory test and a non-qualifying arterial blood gas study. I note as well that while Dr. Raymond Kraynak discovered cyanosis on examination of Claimant's extremities, examinations by Dr. Ahluwalia and Dr. Matthew Kraynak did not detect this condition. In the final analysis, I credit Dr. Ahluwalia's opinion….

Decision and Order at 12-13 (citations omitted).

Claimant asserts that it was error for the administrative law judge to reject Dr. Matthew Kraynak's opinion because the physician relied on an invalid pulmonary function study. Claimant also asserts that Dr. Matthew Kraynak's opinion is based on more information than the results of the pulmonary function study. Claimant notes that Dr. Matthew Kraynak is claimant's treating physician and he maintains that it was error for the administrative law judge to find that Dr. Ahluwalia has qualifications that are superior to those of Dr. Raymond Kraynak. Claimant also suggests that Dr. Raymond Kraynak's opinion is thorough because he is the only physician who reviewed all of the recent evidence. Finally, claimant asserts that it was error for the administrative law judge to rely on Dr. Ahluwalia's opinion of no pulmonary disability, sine the physician did not know the exertional requirements of claimant's usual coal mine employment.

The record contains a letter from Dr. Matthew Kraynak dated April 12, 2000. Dr. Kraynak indicated that he had treated claimant "for some time" and opined that claimant's condition had worsened during the time he had been seen by him. Dr. Matthew Kraynak opined that claimant is totally disabled due to coal workers' pneumoconiosis. Director's Exhibit 125. In a report dated February 27, 2001, Dr. Matthew Kraynak indicated that he had treated claimant since September 30, 1998. He considered claimant's coal mine employment history, symptoms, an x-ray and a pulmonary function study administered on January 3, 2001. He opined that claimant is totally and permanently disabled due to coal workers' pneumoconiosis contracted during his coal mine employment. Claimant's Exhibit 7.

Dr. Ahluwalia examined claimant on July 11, 2000, and based on a review of claimant's symptoms, the examination, an x-ray, a pulmonary function study and a blood gas study, he opined that claimant had no impairment from a cardio-pulmonary standpoint. Dr. Ahluwalia opined that claimant does suffer an impairment from osteoarthritis and wasting of muscle secondary to his polio. Director's Exhibit 131.

The newly submitted medical report evidence also includes the deposition testimony of Dr. Raymond Kraynak, who indicated that he had reviewed all of the newly developed evidence. Dr. Raymond Kraynak stated that he continued to treat claimant, and he opined that claimant is totally disabled due to his coal workers' pneumoconiosis. Claimant's Exhibit 9.

It is well established that the administrative law judge may rely on the medical opinions he finds better supported by underlying documentation. *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); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *Pastva v. The Youghiogheny & Ohio Coal Co.*, 7 BLR 1-829 (1985). We hold that the administrative law judge permissibly relied upon the opinion of Dr. Ahluwalia, finding his opinion of no disability from a cardio-pulmonary standpoint, to be supported by the underlying documentation, including a non-qualifying pulmonary function study and a non-qualifying blood gas study. Consequently, we affirm the administrative law judge's reliance on Dr. Ahluwalia's opinion over the contrary opinions of Drs. Matthew and Raymond Kraynak, to find that claimant has not demonstrated total disability pursuant to Section 718.204(b)(2)(iv). Further, we hold that the administrative law judge, within a proper exercise of his discretion, found that Dr. Ahluwalia's qualifications are superior to Dr. Raymond Kraynak's qualifications. *See Clark, supra*; *Worley, supra*. We note, contrary to claimant's suggestion, that the administrative law judge is not required to accord greater weight to the opinion of a claimant's treating physician. *See Wetzel v. Director, OWCP,* 8 BLR 1-139 (1985).

Finally, we reject claimant's assertion that it was error for the administrative law judge to rely on the medical opinion of Dr. Ahluwalia since the physician was unaware of the exertional requirements of claimant's coal mine employment. Inasmuch as Dr. Ahluwalia concluded that claimant did not suffer from a pulmonary impairment, there is no requirement that the physician have considered the exertional requirements of claimant's coal mine employment. *See Lane v. Union Carbide Corp*., 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997). We, therefore, affirm the administrative law judge's finding that the evidence is insufficient to demonstrate total disability pursuant to Section 718.204(b)(2)(iv).

Because claimant has failed to establish total disability at 20 C.F.R. §718.204(b) based on the newly submitted evidence, the administrative law judge's finding of no change in conditions is affirmed.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, JR.
Administrative Appeals Judge