

BRB No. 99-0253 BLA

JOHN SULLIVAN)

Claimant/-Petitioner)

v.)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Respondent)

DATE ISSUED: 10/28/99

DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Robert D. Kaplan,
Administrative Law Judge, United States Department of Labor.

Frank C. Sluzis, Shenandoah, Pennsylvania, for claimant.

Michelle S. Gerdano (Harvey L. Solano, Solicitor of Labor; 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, Administrative
Appeals Judge, and NELSON, Acting _____, and _____,
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (98-BLA-0385) of
Administrative Law Judge Robert D. Kaplan 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 most recently filed a claim for benefits on October 23,
1986.¹ In an initial Decision and Order dated September 20, 1991, Administrative Law
Judge Frank D. Marden credited claimant with ten and three-tenths years of coal mine

¹ Claimant filed an initial claim on September 27, 1979, which the district director finally
denied on January 28, 1981. Director's Exhibit 29. Claimant filed a duplicate claim on December 5,
1984, which the district director denied on May 14, 1985 upon determining that claimant failed to
establish a material change in conditions pursuant to 20 C.F.R. §725.309. Director's Exhibit 30.
Thereafter, claimant filed his most recent claim on October 23, 1986. Director's Exhibit 1.

employment, and found that claimant established a material change in conditions under 20 C.F.R. §725.309(d), and the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b). Judge Marden further found, however, that the evidence of record was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) and, accordingly, denied benefits. Claimant appealed. In a Decision and Order dated January 27, 1994, the Board affirmed, as unchallenged on appeal, Judge Marden's length of coal mine employment finding, and his findings under Sections 725.309(d), 718.202(a)(1), 718.203(b) and 718.204(c)(2) and (c)(3). *Sullivan v. Director, OWCP*, BRB No. 92-0236 BLA (Jan. 27, 1994)(unpublished). The Board further rejected claimant's contentions that Judge Marden erred in finding the evidence insufficient to establish total disability under Section 718.204(c)(1) and (c)(4), and, accordingly, affirmed the denial of benefits. *Id.*

On January 12, 1995, claimant filed with the district director a request for modification pursuant to 20 C.F.R. §725.310, Director's Exhibit 71, which the district director denied on July 19, 1995. Director's Exhibit 77. In a Decision and Order dated September 16, 1996, Judge Marden found the newly submitted evidence insufficient to establish total disability under Section 718.204(c)(1)-(4). Judge Marden also adopted his prior findings under Section 718.204(c) with regard to the previously submitted evidence, and determined that claimant failed to establish a change in conditions or a mistake in a determination of fact pursuant to Section 725.310. Accordingly, Judge Marden denied benefits. Claimant subsequently filed with the district director a second request for modification, which the district director denied on December 1, 1997.² Director's Exhibit 113. The case was referred to Administrative Law Judge Robert D. Kaplan (the administrative law judge),³ who issued a Decision and Order on the record pursuant to the agreement of the parties. The administrative law judge determined that claimant failed to establish a change in conditions or a mistake in a determination of fact pursuant to Section 725.310 and, accordingly, denied benefits. On appeal, claimant generally contends that he is entitled to benefits in view of the 1987 medical report from Dr. Kraynak which he submitted with the present request for modification. The Director, Office of Workers' Compensation Programs (the Director), has filed a response urging the Board to affirm the denial of benefits for claimant's failure to provide a sufficient basis for review of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's

²Before requesting modification, claimant filed an appeal with the Board, but subsequently file a motion to dismiss the appeal and have the case remanded to the district director for modification proceedings. Director's Exhibit 107. The Board granted the motion in an Order dated July 22, 1997, dismissed the appeal, and remanded the claim to the district director. *Sullivan v. Director, OWCP*, BRB No. 97-0182 BLA (July 22, 1997)(unpublished Order).

³The case was reassigned to Judge Kaplan as Judge Marden was unavailable to render a decision.

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).

We agree with the Director that claimant’s Petition for Review and brief fails to provide an adequate basis for review of the administrative law judge’s Decision and Order. Claimant’s brief neither raises any substantive issues nor identifies any error on the part of the administrative law judge in determining that modification was not established under Section 725.310. Claimant merely points to the 1987 medical opinion from Dr. Kraynak and states that the opinion supports entitlement.⁴ Consequently, we affirm the administrative law judge’s denial of benefits. *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

⁴ Two reports from Dr. Kraynak, dated February 16, 1987 and February 24, 1987, and a letter dated February 11, 1987, were previously admitted into the record by Judge Marden, Director’s Exhibit 11, but submitted again by claimant in connection with the present request for modification. Director’s Exhibit 103.

