BRB No. 02-0163 BLA

FRED L. BEGGS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HAWLEY COAL MINING	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL-WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Robert Weinberger (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for carrier.

Before: SMITH, HALL, and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Carrier appeals the Decision and Order (01-BLA-0641) of Administrative Law Judge Daniel F. Solomon awarding benefits on modification of a miner's duplicate

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 involves the miner's fifth request for modification of a duplicate claim.[2] Administrative Law Judge Daniel F. Sutton initially accepted the parties' stipulation that claimant's July 24, 1998 claim should be considered a motion for modification since it was filed within one year of the filing date of the prior denial of benefits. Director's Exhibit 30 at 3 n.3. Judge Sutton found the new evidence sufficient to establish a change in conditions in that he found that claimant has now established that he suffers from a totally disabling respiratory impairment. *Id.* at 10. However, Judge Sutton denied benefits on the merits because claimant failed to establish that he is totally disabled due to pneumoconiosis. *Id.* On May 1, 2000, claimant filed a request for reconsideration. Director's Exhibit 31. Judge Sutton denied claimant's request for reconsideration on June 8, 2000. Director's Exhibit 33. Thereafter, on July 12, 2000,

[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.

[2]Claimant is Fred L. Beggs, the miner, who filed his first claim for benefits on April 28, 1980. Director's Exhibit 21-1. Administrative Law Judge Charles P. Rippey denied benefits on this first claim, and the Board affirmed Judge Rippey's denial on June 16, 1986. Director's Exhibit 21. Claimant filed his second claim for benefits on August 25, 1987, which Administrative Law Judge Joan Huddy Rosenzweig denied on June 11, 1992. Director's Exhibit 22-27. Thereafter, on July 6, 1992, claimant filed a request for modification. Director's Exhibit 22-30. Administrative Law Judge Reno E. Bonfanti issued a Decision and Order on May 25, 1994 denying the claim. Director's Exhibit 22-45. On September 28, 1994, claimant filed another request for modification. Director's Exhibit 22-47. Judge Bonfanti denied claimant's request for modification on September 6, 1995 and on November 11, 1995 claimant filed yet another request for modification. Director's Exhibits 22-53, 22-54. Administrative Law Judge John C. Holmes denied claimant's request for modification on July 17, 1997, which was filed with the district director on July 28, 1997. Director's Exhibit 22-71.

Claimant subsequently filed another claim for benefits on July 24, 1998. Director's Exhibit 1. The district director initially determined that claimant was entitled to benefits, employer denied liability, and this case was referred to the Office of Administrative Appeals Judges. Director's Exhibits 19, 26. The district director treated the July 1998 claim as a new, duplicate claim for benefits. Director's Exhibit 25. However, as discussed above, Administrative Law Judge Daniel F. Sutton treated this claim as a request for modification. Director's Exhibit 30.

claimant filed a request for modification, the district director denied claimant's request, and claimant requested a hearing before the Office of Administrative Law Judges. Director's Exhibits 37, 40, 41.

Administrative Law Judge Daniel F. Solomon (hereinafter, the administrative law judge) considered all the evidence in the record and found that claimant established total disability due to pneumoconiosis. Decision and Order at 10-11. Therefore, the administrative law judge found that claimant established a mistake in fact pursuant to 20 C.F.R. §725.310 (2000). Accordingly, benefits were awarded.

On appeal, carrier contends that the administrative law judge erred in finding total respiratory disability due to pneumoconiosis and a mistake in fact pursuant to 20 C.F.R. §725.310 (2000). Carrier's Brief at 3-5. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

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).

After considering all of the relevant medical evidence,[3] the administrative law judge found that claimant established a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000) and that claimant has established that his total disability is due to pneumoconiosis by according greater weight to the opinions of Dr. Rasmussen over the contrary opinions in the record. Decision and Order at 10-11. Carrier contends that the administrative law judge erred in finding a mistake in fact and total disability due to

[3]Dr. Hippensteel opined that the abnormalities in claimant's lung function are likely related to emphysema and coronary artery disease both of which became more significant after he left the mines and continued to smoke. Director's Exhibit 22-52. Dr. Fino found that claimant's mild respiratory impairment is due to cigarette smoking. Director's Exhibit 22-58. Dr. Zaldivar stated that claimant's airway obstruction is from his smoking. Director's Exhibit 22-39. Dr. Castle opined that claimant has no significant respiratory impairment related to his mild chronic obstructive pulmonary disease and chronic bronchitis. Director's Exhibit 21-13. Dr. Vasudevan found no significant respiratory impairment secondary to claimant's possible coal workers' pneumoconiosis. Director's Exhibit 12. Drs. Rasmussen, Ranavaya, Qazi, Craft, and Forehand have all offered opinions that are supportive of the conclusion that claimant's total respiratory disability is due to pneumoconiosis. Director's Exhibits 6, 22-25, 22-26, 22-29, 22-43, 22-46, 37.

pneumoconiosis based on Dr. Rasmussen's opinions inasmuch as the administrative law judge mischaracterized Dr. Rasmussen's qualifications. Carrier's Brief at 3-4.

In his Decision and Order, the administrative law judge noted that Dr. Rasmussen is Board-certified in internal medicine and pulmonary disease. Decision and Order at 6, 10. However, as employer points out and as the record supports, Dr. Rasmussen is Board-certified in internal medicine, but only qualified to be Board-certified in pulmonary disease. Director's Exhibit 22-40. Therefore, employer is correct that the administrative law judge mischaracterized Dr. Rasmussen's qualifications. *See Beatty v. Danri Corporation and Triangle Enterprises*, 16 BLR 1-11 (1991); *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). However, because the administrative law judge has provided valid alternative reasons for according greater weight to Dr. Rasmussen's opinions over the contrary opinions in the record, *see* discussion, *infra*; *Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378 (1983), we deem harmless, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), any error the administrative law judge may have made in according greater weight to Dr. Rasmussen's opinions based on his qualifications.

The administrative law judge credited Dr. Rasmussen's opinions based on the following. First, the administrative law judge noted that although Dr. Rasmussen is not a treating physician, Dr. Rasmussen has seen the claimant on three occasions. Decision and Order at 10; *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8 (1996). Second, the administrative law judge accepted Dr. Rasmussen's opinion because he found it to be more rational than the contrary opinions in the record and better supported by the objective medical data of record. Decision and Order at 10; *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. United States Steel Corp.*, 8 BLR 1-46 (1985). Third, the administrative law judge stated that most of the contrary opinions were given before Dr. Rasmussen performed his 1998 examination and report[4] and that none of the contrary opinions accept that the miner has established pneumoconiosis arising out of coal mine employment and total respiratory disability. Decision and Order at 10; *see Scott v. Mason Coal Co.*, 289 F.3d 263, --- BLR --- (4th Cir. 2002); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995) *see also Curry v. Beatrice Pocahontas Coal Co.*, 67 F.3d 517, 20 BLR 2-1 (4th Cir. 1995), *rev'g on other grds*, 18 BLR 1-59 (1994)(en banc); *Grigg v. Director, OWCP*, 28 F.3d

[4]The administrative law judge noted earlier in his Decision and Order that Dr. Vasudevan's 1999 examination is "[t]he only examination of the Claimant subsequent to that of Dr. Rasmussen." Decision and Order at 9. The administrative law judge noted that Dr. Vasudevan diagnosed "possible coal workers' pneumoconiosis" and that Judge Sutton found Dr. Rasmussen's opinion to be better reasoned and better documented than Dr. Vasudevan's opinion. Decision and Order at 8.

416, 18 BLR 2-299 (4th Cir. 1994).

An administrative law judge has broad discretion in assessing the evidence of record to determine whether a party has met its burden of proof, *see Maddaleni v. Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984), and the Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge, *see Markus v. Old Ben Coal Co.*, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983)(administrative law judge is not bound to accept opinion or theory of any given medical officer, but weighs evidence and draws his own inferences); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Therefore, we reject carrier's contentions[5] and hold that the administrative law judge, applying *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995) and *Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990), properly found, based on Dr. Rasmussen's opinion, that claimant established total respiratory disability due to pneumoconiosis[6] and a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000), *see Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992).

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[5]Carrier incorrectly asserts that "Dr. Rasmussen is the only physician in this claim who offered an opinion that coal mine dust exposure caused the Claimant's pulmonary impairment." Carrier's Brief at 4. Drs. Ranavaya, Qazi, Craft, and Forehand have all offered opinions that are supportive of the conclusion that claimant's total respiratory disability is due to pneumoconiosis, Director's Exhibits 22-25, 22-26, 22-29, 22-46. *See* 20 C.F.R. §718.204(c).

[6]We note that Dr. Rasmussen's opinion, that claimant's coal workers' pneumoconiosis is a major contributing factor to his disabling respiratory insufficiency, is also sufficient to satisfy the disability causation standard established by the revised regulation at 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge