

BRB No. 97-0472 BLA

JOANNE RITZMAN )  
(Widow of DAVID RITZMAN) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 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 - Denial of Benefits on Remand from the Benefits Review Board of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

Sarah M. Hurley (J. Davitt McAteer, Acting 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: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order- Denying Benefits on Remand from the Benefits Review Board (91-BLA-2448) of Administrative Law Judge Paul H. Teitler in 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 case is before the Board for the fourth time. On remand, the administrative law judge found that the evidence was insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). He

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<sup>1</sup> Claimant is Joanne Ritzman, widow of the deceased miner, David Ritzman, who filed a miner's claim with the Department of Labor (DOL) on January 26, 1984. Director's Exhibit 1. The miner died on January 10, 1991 and claimant is persuing the miner's claim. Decision and Order at 2; Director's Exhibit 51. The administrative law judge awarded survivor's benefits to the widow previously, and those issues are not involved in the instant appeal.

then concluded that the evidence could not establish a change in condition or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310(a). Accordingly, the administrative law judge denied modification and the claim.

The procedural history of this case is as follows: the miner filed a claim with the Department of Labor on January 26, 1984. Director's Exhibit 1. Following a hearing, Administrative Law Judge Jeffrey Tureck denied benefits because he found that the evidence failed to establish total respiratory disability at Section 718.204(c) in a Decision and Order dated July 14, 1987. Director's Exhibit 32. Following claimant's appeal, the Board issued a Decision and Order affirming the administrative law judge's denial of benefits. *Ritzman v. Director, OWCP*, BRB No. 87-2122 BLA (Sept. 27, 1989)(unpub.). Director's Exhibit 36. The miner then filed a motion for modification with new evidence from Dr. Kraynak on September 20, 1990. Director's Exhibit 37. The miner died on January 10, 1991. Director's Exhibit 51. The miner's widow filed an application for survivor's benefits on March 25, 1991. Director's Exhibit 49. Judge Teitler issued a Decision and Order denying modification and thereby benefits in the miner's claim, but awarding benefits on the survivor's claim in a Decision and Order dated March 23, 1993. Claimant appealed the administrative law judge's denial of the miner's claim. On appeal, the Board vacated the administrative law judge's modification findings, and remanded the case for him to consider whether Dr. Kraynak's opinions were sufficient to establish a change of conditions pursuant to Section 725.310(a). *Ritzman v. Director, OWCP*, BRB No. 93-1326 BLA (Nov. 29, 1994)(unpub.). On remand, the administrative law judge denied benefits because he found that the evidence was insufficient to establish total respiratory disability at Section 718.204(c) and insufficient to establish modification at Section 725.310(a) in a Decision and Order dated May 18, 1995. Claimant appealed, and the Board again vacated the administrative law judge's findings, this time due to a change in law, citing *Keating v. Director, OWCP*, 71 F. 3d 1118, 20 BLR 2-53 (3d Cir. 1995), and remanded the case to the administrative law judge to consider, *inter alia*, whether the evidence established a mistake of fact. *Ritzman v. Director, OWCP*, BRB No. 95-1563 BLA (Mar. 28, 1996) (unpub.). On remand, the administrative law judge found that the evidence failed to establish a change in conditions because it was insufficient to establish total respiratory disability, and was insufficient to establish a mistake in a determination of fact. It is from this Decision and Order that claimant files the instant appeal.

On appeal, claimant challenges the administrative law judge's conclusion that the evidence, and specifically, the opinion of Dr. Kraynak, claimant's treating physician, is insufficient to establish total respiratory disability. Claimant contends that the administrative law judge fails to consider the rationale and evidence that supports Dr. Kraynak's opinion. The Director, Office of Workers' Compensation Programs (the Director), in response, asserts that the administrative law judge's finding that the evidence fails to establish entitlement is supported by substantial evidence, and accordingly, it urges affirmance of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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 erred when he found that Dr. Kraynak's opinion was insufficient to establish total respiratory disability and thereby, a change in conditions. Claimant asserts that the administrative law judge neglected to consider the medical evidence which supports Dr. Kraynak's opinion, and that he fails to give adequate recognition to the fact that Dr. Kraynak is claimant's treating physician. We disagree. The administrative law judge correctly identified the newly submitted evidence upon which claimant's motion for modification is sought as various opinions by Dr. Kraynak, claimant's treating physician. Decision and Order at 4-5; Director's Exhibits 27, 28, 37, 43; Claimant's Exhibit 1. The administrative law judge found that Dr. Kraynak's opinion was not well-reasoned, and he discounted it on that basis. *Id.* The administrative law judge found that Dr. Kraynak's December 6, 1986 report, Director's Exhibits 27, 28, was not credible because it was based upon a pulmonary function study, which he found was invalidated by Dr. Cander. Decision and Order at 5; Director's Exhibit 5. He also noted that Dr. Kraynak was aware that Drs. Wagner and Karlavage had submitted similar non-qualifying pulmonary function studies which were valid. Decision and Order at 4; Director's Exhibits 10, 22. The administrative law judge also correctly noted that although Dr. Kraynak was claimant's treating physician, claimant testified that he saw Dr. Kraynak only once prior to the November 6, 1986 pulmonary function test. H. Tr. at 44-45. Finally, he noted that claimant had testified that he was performing non-sedentary duties, which the administrative law judge described, about a month prior to the hearing. Decision and Order at 5; H. Tr. at 39-47. Thus, he permissibly found that this report was not supported by the objective evidence of record, including claimant's testimony. See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Cambell v. Director, OWCP*, 11 BLR 1-16 (1987). Moreover, the administrative law judge found that Dr. Kraynak's November 27, 1990 report, Director's Exhibit 43, was based, in part, upon a pulmonary function study which was invalidated by Dr. Spagnolo. Decision and Order at 5; Director's Exhibit 46. The administrative law judge permissibly relied upon the fact that his crediting of Dr. Spagnolo's invalidation report, based upon his superior credentials was previously affirmed by the Board. Decision and Order at 5; *Ritzman v. Director, OWCP*, BRB No. 93-1326 BLA (Nov. 29, 1994)(unpub.), slip op. at 3-4. Thus, the administrative law judge permissibly discounted all of Dr. Kraynak's reports on the ground that they were not supported by the objective evidence of record. See *Justice, supra*; *Campbell, supra*. Further, we reject claimant's contention that the administrative law judge is required to give deference to a treating physician, because the administrative law judge recognized that Dr. Kraynak was claimant's treating physician but provided valid reasons for discrediting his opinion. See *Schaaf v. Mathews*, 574 F. 2d 157 (3d Cir. 1978); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1989). We affirm, therefore, the administrative law judge's determination to discount Dr. Kraynak's opinion as not well-reasoned, as it is supported by substantial evidence. We affirm, thereby, the administrative law judge's denial of modification pursuant to Section 725.310(a), and therefore, of benefits in the instant case. 20 C.F.R. §725.310(a).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits on Remand from the Benefits Review Board is affirmed.

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge