

BRB No. 99-1199 BLA

LANDON W. HURLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
KBC MINING , INCORPORATED)	DATE ISSUED:
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employer/Carrier- Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (1998-BLA-1001) of Administrative Law Judge Daniel J. Roketenetz denying modification and benefits 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).

The relevant procedural history of this case is as follows: Claimant filed a

claim for black lung benefits on March 4, 1996. Decision and Order at 3; Director's Exhibit 1. That claim was denied by the district director on July 23, 1996. Decision and Order at 3; Director's Exhibit 26. On May 20, 1997, within one year of the denial, claimant requested modification, Director's Exhibit 27, which was denied on September 19, 1997. Decision and Order at 3; Director's Exhibit 28. Claimant requested a formal hearing and the case was subsequently transferred to the Office of Administrative Law Judges. Decision and Order at 3; Director's Exhibit 52.

The administrative law judge held a formal hearing on claimant's modification request, credited claimant with twenty years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. Pursuant to the governing holding in *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994), the administrative law judge considered the evidence generated subsequent to the previous denial, in conjunction with the previously submitted evidence, and found that it was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) and was thus insufficient to establish a change in conditions since the previous denial. The administrative law judge further found that there was no mistake in a determination of fact in the prior denial. The administrative law judge thus found that the evidence did not warrant modification pursuant to 20 C.F.R. §725.310. Accordingly, benefits were denied. In the instant appeal, claimant generally challenges the administrative law judge's findings with respect to establishing the existence of pneumoconiosis and total disability pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.204(c)(4) and contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, is not participating 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; and that the pneumoconiosis is totally disabling. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure of claimant to establish any of the foregoing elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director*,

OWCP, 9 BLR 1-1 (1986). The United States Court of Appeals for the Sixth Circuit has made plain that when a request for modification is filed, regardless of the grounds stated, if any, the administrative law judge should reconsider all of the evidence to determine whether it establishes a mistake of fact or change in conditions. *Worrell*, 27 F.3d at 230, 18 BLR at 2-296.

After consideration of the administrative law judge's Decision and Order, the arguments of the parties and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Initially, we disagree with claimant's contention that the administrative law judge erred in according less weight to the medical opinions of Drs. Cherukuri and Fritzhand at Section 718.202(a)(4) and/or Section 718.204(c)(4). The administrative law judge discussed all of the evidence of record and articulated a rational reason for not relying on the conclusions of these physicians. Decision and Order at 8, 10-13; Director's Exhibits 13-14. Specifically, the administrative law judge found that their opinions were not supported by the credible, objective evidence of record. *Id.* Essentially, claimant asks us to reweigh the evidence, which we are not authorized to do. 33 U.S.C. 20 C.F.R. §921(b)(3); 20 C.F.R. §802.301. The regulations state that the Board "is not empowered to engage in a *de novo* proceeding or unrestricted review of a case" and is only authorized to review the administrative law judge's findings of fact and conclusions of law. 20 C.F.R. §802.301; *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); see *Harlan Bell Coal Co. v. Lemar*, 904 F.2d 1042, 14 BLR 2-1 (6th Cir. 1990). As the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge when they are supported by substantial evidence, *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987), we affirm the administrative law judge's findings regarding the credibility of the opinions of Drs. Cherukuri and Fritzhand at Sections 718.202(a)(4) and 718.204(c)(4).¹ Consequently, we affirm

¹ A review of the record indicates that the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis or total disability in accordance with the provisions of 20 C.F.R. §§718.202(a)(1)-(3) and 718.204(c)(1)-(3) are also supported by substantial evidence. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-

the administrative law judge's findings that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) or total disability pursuant to Section 718.204(c), as well as the administrative law judge's finding that claimant failed to establish a change in conditions or a mistake in a determination of fact pursuant to Section 725.310, as they are supported by substantial evidence and are in accordance with law. *Worrell, supra*.

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

139 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *Pastva v. The Youghioghney & Ohio Coal Co.*, 7 BLR 1-829 (1985); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983).