BRB No. 04-0299 BLA

KENNETH L. SHADLE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 08/10/2004
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

Barry H. Joyner (Howard M. Radzely, 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: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2003-BLA-05574) of Administrative Law Judge Paul H. Teitler denying 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 administrative law judge, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.[1] Decision and Order at 2. The administrative law judge

[1]Claimant filed his initial claim for benefits on December 1, 1980, which was denied by the Department of Labor on May 26, 1981 as claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant took no further action until he filed the present claim on May 24, 2002, which was denied by the district director on December 31, 2002. Director's Exhibits 3, 17. Claimant subsequently requested a hearing before the Office of

found, and the parties stipulated to, sixteen years of qualifying coal mine employment and the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203. Decision and Order at 2; Hearing Transcript at 5; Director's Exhibits 1, 19; Director's Brief at 2-3. The administrative law judge concluded that the evidence of record was insufficient to establish that claimant was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204. Decision and Order at 4-6. Accordingly, benefits were denied.

On appeal, claimant contends that the opinion of Dr. Kraynak is sufficient to establish that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(iv). The Director, Office of Workers' Compensation Programs, responds asserting that the administrative law judge's denial of benefits is supported by substantial evidence.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 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).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(en banc). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(en banc).

Claimant argues that in finding that total disability was not established pursuant to Section 718.204(b)(iv), the administrative law judge did not accord appropriate weight to the opinion of Dr. Kraynak, the miner's treating physician. Claimant's Brief at 2. Claimant's argument lacks merit. The administrative law judge adequately examined and discussed all of the evidence relevant to the issue of total disability and rationally concluded that the weight of the credible evidence fails to carry claimant's burden pursuant to Section

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Administrative Law Judges.

[2]The administrative law judge's length of coal mine employment determination and his findings pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

718.204(b)(2)(iv). Decision and Order at 5-6; Director's Exhibits 1, 5, 16, 27; Claimant's Exhibit 2; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Mazgaj v. Valley Camp Coal Co.*, 9 BLR 1-201 (1986). The administrative law judge permissibly accorded greater weight to the opinion of Dr. Rashid, that claimant suffers no respiratory or pulmonary impairment due to coal dust exposure, based upon Dr. Rashid's qualifications, the reasoning in his opinion and the objective evidence supporting it.[3] *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Clark v. Karst Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co*., 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(en banc), *aff'd on recon. en banc*, 9 BLR 1-104 (1986); Decision and Order at 6; Director's Exhibits 5, 27.

Regarding Dr. Kraynak's opinion, that claimant is totally disabled due to coal workers' pneumoconiosis, the administrative law judge was not required to accord determinative weight to this opinion solely based upon Dr. Kraynak's status as claimant's treating physician.[4] *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-114 (3d Cir. 1997); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). In a proper exercise of his discretion as fact-finder, the administrative law judge rationally found that Dr. Kraynak's opinion was unreliable and thus insufficient to meet claimant's burden of proof as the physician relied upon invalid or non-qualifying objective medical evidence and his conclusions are not supported by the objective evidence of record.[5] *Worhach,*17 BLR 1-105; *Clark,*12 BLR 1-149; *Fields*, 10 BLR 1-19; Decision and Order at 6; Director's Exhibit 16; Claimant's Exhibit 2.

As the administrative law judge permissibly concluded that the evidence of record

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[3]The record indicates that Dr. Kraynak is Board-eligible in family medicine. Claimant's Exhibit 2 at 3. Dr. Rashid is Board-certified in internal medicine. Director's Exhibit 6. Dr. Cubler's credentials are not in the record. Director's Exhibit 1.

[4]This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as the miner was last employed in the coal mine industry in the Commonwealth of Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 4.

[5]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (b)(2)(ii).

does not establish that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to Section 718.204(b), claimant has not met his burden of proof on all the elements of entitlement. *Clark*, 12 BLR 1-149; *Trent*, 11 BLR 1-26; *Perry*, 9 BLR 1-1. The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark*, 12 BLR 1-149; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, as claimant makes no other, specific challenge to the administrative law judge's findings on the merits, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish total disability pursuant to Section 718.204(b)(2)(iv) as it is supported by substantial evidence and is in accordance with law.[6] *See Clark*, 12 BLR 1-149; *Trent*, 11 BLR 1-26; *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

[6]We note that the instant claim is a subsequent claim pursuant to 20 C.F.R. §725.309. *See* 20 C.F.R. §725.309; Director's Exhibits 1, 3; *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995). Although the administrative law judge did not specifically discuss the applicability of Section 725.309, any error is harmless as the Director conceded the existence of pneumoconiosis, an element of entitlement previously decided against claimant in the prior claim. Director's Exhibits 1, 19; Hearing Transcript at 5; Director's Brief at 2-3; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Thus, the administrative law judge properly reviewed this subsequent claim. *See* 20 C.F.R. §725.309; *Swarrow*, 72 F.3d 308, 20 BLR 2-76.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge