BRB No. 04-0495 BLA

FRANKLIN REECE STAHL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 02/07/2005
	)	
K&R TRUCKING COMPANY	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

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

Franklin Reece Stahl, Valley View, Pennsylvania, *pro se*.

Ross A. Carrozza (Marshall, Dennehey, Warner, Coleman & Goggin), Scranton, Pennsylvania, for employer.

Before: DOLDER. Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2003-BLA-00142) of Administrative Law Judge Paul H. Teitler 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).[1] Claimant filed his original claim on

[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 codified 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.

July 2, 1982, which the district director denied.[2] Director's Exhibits 20. In a Decision and Order issued November 5, 2003, the subject of the instant appeal, Administrative Law Judge Paul H. Teitler (the administrative law judge) credited claimant with forty and one-half years of coal mine employment and considered the newly submitted evidence in conjunction with the previous evidence of record at 20 C.F.R. §§718.202(a)(1)-(4) and 718.204(b)(2)(i)-(iv). The administrative law judge found that the evidence was insufficient to establish a change in condition pursuant to 20 C.F.R. §725.310 (2000). The administrative law judge also reviewed all of the evidence of record and concluded that a mistake in a determination of fact had not been made. Accordingly, he denied modification and benefits. On appeal herein, claimant generally challenges the administrative law judge's denial of modification and benefits. Employer responds, urging affirmance of the denial of modification and benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). 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

---

[2] Claimant filed his second claim on May 26, 1987. Director's Exhibit 21. Administrative Law Judge Robert D. Kaplan issued a Decision and Order denying benefits on May 11, 1989. *Id.* Claimant filed his third claim on July 19, 1990, which the district denied. Director's Exhibit 22. Claimant filed his fourth claim on February 18, 1993, which was subsequently withdrawn. Director's Exhibit 23. Claimant filed his fifth application for benefits on September 10, 1996. Director's Exhibit 24. Administrative Law Judge Daniel F. Sutton issued a Decision and Order denying benefits on September 16, 1998. *Id.* Claimant appealed the denial of benefits to the Board, but while the case was pending at the Board, claimant requested that the case be remanded in order to file a modification request. Subsequent to the denial of modification by the district director, claimant withdrew his claim. Director's Exhibit 24. Claimant filed his sixth claim on March 20, 2000, which was denied by the district director on July 13, 2000. Claimant requested a formal hearing, but withdrew his request on August 23, 2000, before a hearing was held. Director's Exhibit 28. Claimant filed a request for modification on September 24, 2000, which was treated as a duplicate claim by the district director since the claim upon which the modification request was based had been withdrawn. Director's Exhibits 35, 36. In a Decision and Order issued on March 28, 2002, Administrative Law Judge Ralph A. Romano denied benefits. Director's Exhibit 66. Most recently, claimant filed a request for modification of the denial on March 29, 2002, which was denied by the district director and referred to the Office of Administrative Law Judge's for a hearing.

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 under 20 C.F.R. Part 718, claimant must prove 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, 718.201, 718.202, 718.203, 718.204. Failure to establish any 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 may establish a basis for modification if the evidence demonstrates either a change in conditions since the issuance of a previous decision or if after consideration of all of the evidence, it is determined that there has been a mistake in a determination of fact. 20 C.F.R. §725.310 (2000).[3] In considering whether a change in conditions has been established pursuant to Section 725.310 (2000), an administrative law judge is obligated to perform an independent assessment of the newly submitted evidence, considered in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement which defeated entitlement in the prior decision. *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995); *see Kingery v. Hunt Branch Coal Co.*, 19 BLR 1-6, 1-11 (1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993).[4]

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.

In considering the evidence pursuant to Section 718.202(a)(1), the administrative law judge discussed the eight readings of four x-rays, as well as the qualifications of the readers. Decision and Order at 4, 7-8; Director's Exhibit 71; Employer's Exhibits 1, 3. The administrative law judge correctly found that all of the x-ray readings were negative for the presence of pneumoconiosis, except the readings by Drs. Mathur and Smith. Decision and Order at 7-8. The administrative law judge assigned no weight to the interpretations by Drs.

[3] The amendments to the regulations at 20 C.F.R. §725.310 (2000) do not apply to claims, such as the instant claim, which were pending on January 19, 2001. 20 C.F.R. §725.2

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as claimant's last coal mine employment occurred in the Commonwealth of Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

Mathur and Smith since they were never exchanged with employer, they were more than five years older than the more recent October 30, 2002, x-ray, and they were outweighed by the multiple negative readings of the October 30, 2002, x-ray by dually qualified B readers and Board-certified radiologists. Decision and Order at 8. The administrative law judge thus reasonably found that the clear preponderance of the credible x-ray interpretations by the readers with superior qualifications was negative. *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)*; *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 7-8. We, therefore, affirm the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) as it is supported by substantial evidence.

Further, the administrative law judge properly concluded that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2) as there was no biopsy evidence in the record. *See* 20 C.F.R. §718.202(a)(2); Decision and Order at 8. In addition, the administrative law judge correctly found that the presumptions enumerated at Section 718.202(a)(3) are inapplicable to this claim as the record contains no evidence of complicated pneumoconiosis, *see* 20 C.F.R. §718.304; claimant filed his claim after January 1, 1982, *see* 20 C.F.R. §718.305; and this is not a survivor's claim. *See* 20 C.F.R. §718.306; *Langerud v. Director, OWCP,* 9 BLR 1-101 (1986); Decision and Order at 8.

In weighing the newly submitted medical opinion evidence of record on the issue of the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge rationally concluded that this evidence failed to establish the existence of pneumoconiosis by a preponderance of the evidence. *Perry*, 9 BLR 1-1. In so finding, the administrative law judge rationally relied on the medical opinion of Dr. Levinson, the only medical opinion in the current record and which the administrative law judge found was well-documented and reasoned, who concluded that claimant did not suffer from pneumoconiosis and that his lung cancer was due to lengthy cigarette smoking. *Clark*, 121 BLR 1-149; *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); Decision and Order at 5-6, 8-9; Director's Exhibit 80; Employer's Exhibits 3-4.

In considering whether total disability was established under Section 718.204(b)(2)(i), (ii), the administrative law judge noted that the newly submitted pulmonary function study and blood gas study were non-qualifying and found that total disability was not established thereunder.[5] *Sexton v. Southern Ohio Coal Co.*, 7 BLR 1-411 (1984); Decision and Order at

[5] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable values delineated in the tables at 20 C.F.R. 718, Appendix B, C,

5, 9-10; Director's Exhibit 80. We therefore affirm the administrative law judge's finding that the evidence was insufficient to establish total disability pursuant to Section 718.204(b)(2)(i), (ii).

In addition, the administrative law judge correctly found that since the record contains no evidence of cor pulmonale with right sided congestive heart failure, *see* 20 C.F.R. §718.204(b)(2)(iii), establishing total disability by this method was precluded. Decision and Order at 10.

In considering whether total disability was established under Section 718.204(b)(2)(iv), the administrative law judge permissibly credited the opinion of Dr. Levinson, which stated that claimant was not totally disabled from a respiratory standpoint and was capable of resuming his prior coal mine employment. *Clark*, 12 BLR 1-149; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-291 (1984); Decision and Order at 11; Director's Exhibit 80; Employer's Exhibits 2, 3. Consequently, we affirm the administrative law judge's finding that the medical opinion evidence of record failed to establish total disability pursuant to Section 718.204(b)(2)(iv).

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if his evidence is found insufficient to establish a crucial element of entitlement. *See Trent*, 11 BLR at 1-27; *White v. Director, OWCP*, 6 BLR 1-368 (1983). Furthermore, 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. *Anderson*, 12 BLR at 1-113; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); *Short v. Westmoreland Coal Co.*, 10 BLR 1-127 (1987).

Because claimant has failed to establish the existence of pneumoconiosis and total respiratory disability pursuant to Sections 718.202(a)(1-(4) and 718.204(b)(2)(i)-(iv), we affirm the administrative law judge's finding that claimant failed to demonstrate a change in conditions pursuant to Section 725.310 (2000). Furthermore, the administrative law judge properly reviewed the entire record and rationally concluded that there was no mistake in a determination of fact in the prior denial. Decision and Order at 11. Therefore, we affirm the administrative law judge's finding that claimant failed to establish entitlement to

---

respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

modification pursuant to 20 C.F.R. §725.310 (2000) as it is supported by substantial evidence and is in accordance with law. *See Keating*, 71 F.3d 1118, 20 BLR 2-53. Inasmuch as claimant's petition for modification was properly denied pursuant to 20 C.F.R. §725.310 (2000), we affirm the denial of benefits.

Accordingly, the Decision and Order of the administrative law judge denying modification and benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge