

BRB No. 97-0885 BLA

ROBERT B. ALLSHOUSE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
BCNR MINING CORPORATION)	DATE ISSUED:
)	
and)	
)	
STATE WORKMENS' INSURANCE FUND)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Robert S. Brierton, Johnstown, Pennsylvania, for claimant.

Maureen E. Calder (Marshall, Dennehey, Warner, Coleman & Goggin), Scranton, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (96-BLA-0519) of Administrative Law Judge Daniel L. Leland on a 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 administrative law judge found that the evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309, the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative

law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence establishes the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Employer asserts that the administrative law judge erred in rejecting the opinions of Drs. Fino and Kaplan, and in his weighing of the medical opinion evidence. Employer also challenges the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at Section 718.204(b). Claimant,¹ in response urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that it will not file a response brief.²

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹ Claimant is Robert B. Allshouse, the miner, who filed an application for benefits on September 29, 1982. Director's Exhibit 39. This claim was denied by the Office of Workers' Compensation Board, and became final when claimant took no further action. *Id.* Claimant then filed a second claim on November 4, 1994. Director's Exhibit 1.

² Inasmuch as no party challenges the administrative law judge's findings that the parties stipulated to 35 years of qualifying coal mine employment, that employer is the putative responsible operator, that the evidence establishes a material change in conditions pursuant to Section 725.309, and that the evidence establishes total disability pursuant to Sections 718.204(c), we affirm these findings. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer challenges the administrative law judge's finding that the evidence establishes the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Employer contends that it was error for the administrative law judge to discount the opinions of Drs. Fino and Kaplan, and then accept the various reports which opined the existence of pneumoconiosis. Employer contends that the opinions of Drs. Lopez, Fine, Biancarelli and Song are too old to be credited, as they are currently between fifteen and twenty-one years old, in light of more recent evidence of record. Employer also asserts that the opinions of Drs. Schaaf, Bajwa and Eligator should not have been accorded greater weight by the administrative law judge inasmuch as they did not fully explain their diagnoses.³ We disagree. The administrative law judge accurately summarized the ten medical opinions of record and permissibly discounted the opinions of Drs. Fino and Kaplan, each of whom opined there was no evidence of pneumoconiosis, because he found that they failed to adequately explain their diagnoses.⁴ See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91(1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). He then stated: "I believe that the physicians finding that claimant's pulmonary disorder is occupationally related are more persuasive than the opinions of Drs. Fino and Kaplan." Decision and Order at 10. The administrative law judge's reliance on physicians who were board-certified pulmonary specialists and who had treated claimant for many years is supported by substantial evidence. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Likewise, we reject employer's contention that the opinions of Drs. Lopez, Fine, Biancarelli and Song are too old to be credited, as the administrative law judge has the requisite discretion to consider such evidence, especially where it is evidence of the existence of pneumoconiosis, because of the progressive nature of pneumoconiosis. See *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); *Keen v. Jewell Ridge Coal Corp.*, 6 BLR 1-454 (1983). Employer's remaining contentions regarding the opinions of Drs. Schaaf, Bajwa and Eligator, constitute requests for the Board to reweigh the evidence, which we are not empowered to do. See *Anderson v. Valley Camp of Utah, Inc.*,

³ Employer does not raise any contention with respect to the administrative law judge's crediting of Dr. Sweirczweski's diagnosis of pneumoconiosis. Director's Exhibit 18.

⁴ The administrative law judge found that Dr. Fino did not explain how claimant's bullous emphysema was not substantially related to or significantly aggravated by his long coal mine employment. Decision and Order at 10. The administrative law judge found that Dr. Kaplan declined to diagnose pneumoconiosis based on a negative chest x-ray and did not rule out the presence of an occupational pulmonary disorder.

12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). We therefore, reject employer's contentions, and affirm the administrative law judge's finding that the evidence establishes the existence of pneumoconiosis pursuant to Section 718.204(c)(4), as it is based upon substantial evidence.

Employer also challenges the administrative law judge's finding that the evidence establishes that claimant's total disability was due to pneumoconiosis pursuant to Section 718.204(b). Employer's contention is that the administrative law judge erred in according less weight to the opinions of Drs. Fino and Kaplan inasmuch as their opinions are in accord with the objective medical evidence. Employer's Brief at 6. We disagree. The administrative law judge correctly utilized the standard as set forth by the United States Court of Appeals for the Third Circuit in *Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989) at Section 718.204(b), that pneumoconiosis must be a substantial contributor to the disability. The administrative law judge combined his analysis at Section 718.204(b) with his prior analysis of the medical opinions at Section 718.202(a)(4) in which he permissibly discounted the opinions of Drs. Fino and Kaplan on the basis that they failed to diagnose pneumoconiosis and he was more persuaded by the opinions finding claimant's pulmonary disorder is occupationally related. *See Justice, supra; Campbell, supra.* Inasmuch as the administrative law judge's weighing of the medical opinions is supported by substantial evidence, we affirm, the administrative law judge's finding that the evidence is sufficient to establish claimant's total disability was due to pneumoconiosis at Section 718.204(b). We reject, therefore, all of employer's contentions and affirm the administrative law judge's award of benefits.

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN

Administrative Appeals Judge