

BRB No. 01-0692 BLA

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| GILBERT ELLIOTT              | ) |                    |
|                              | ) |                    |
| Claimant-Petitioner          | ) |                    |
|                              | ) |                    |
| v.                           | ) | DATE ISSUED:       |
|                              | ) |                    |
| BELLAIRE CORPORATION         | ) |                    |
|                              | ) |                    |
| Employer-Respondent          | ) |                    |
|                              | ) |                    |
| DIRECTOR, OFFICE OF WORKERS' | ) |                    |
| COMPENSATION PROGRAMS,       | ) |                    |
| UNITED STATES DEPARTMENT     | ) |                    |
| OF LABOR                     | ) |                    |
|                              | ) |                    |
| Party-in-Interest            | ) | DECISION and ORDER |

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

Rita S. Fuchsman, Chillicothe, Ohio, for claimant.

John C. Artz (Pollito & Smock), Pittsburgh, Pennsylvania, for employer.

Timothy S. Williams (Eugene Scalia, 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 Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2000-BLA-0823) of Administrative Law Judge Daniel L. Leland, 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).<sup>1</sup> The parties stipulated, and the administrative law judge found, that

<sup>1</sup>The Department of Labor has amended the regulations implementing the Federal

claimant established twenty-nine years of coal mine employment. Hearing Transcript at 10; Decision and Order at 2. Based on the date of filing,<sup>2</sup> the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718 (2000), and found that the newly submitted evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000). Thus, the administrative law judge found that claimant failed to demonstrate a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).<sup>3</sup> Accordingly, benefits were denied.

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Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a law suit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the law suit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the law suit would not affect the outcome of the case. *National Mining Association v. Chao*, No 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

<sup>2</sup>The record indicates that claimant filed his initial claim for benefits on June 4, 1979, which was denied by Administrative Law Judge Robert S. Amery on March 8, 1985. Director's Exhibit 20. Claimant's subsequent appeal to the Board was dismissed on April 14, 1986, due to claimant's failure to timely submit a petition for review and brief in support of his claim. *Elliott v. North American Coal Co.*, BRB No. 85-0832 BLA (April 14, 1986)(unpub. Order); Director's Exhibit 20. Claimant filed a second claim for benefits on August 18, 1995, which was denied by the district director on January 18, 1996, due to claimant's failure to establish any requisite element of entitlement except total respiratory disability. Director's Exhibit 21. Claimant took no further action until he filed a third claim on November 29, 1999, the subject of this appeal. Consequently, the present claim constitutes a duplicate claim pursuant to 20 C.F.R. §725.309 (2000). *See Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

<sup>3</sup>The amendments to the regulation at 20 C.F.R. §725.309 do not apply to claims, such as this, which were pending on January 19, 2001. Rather, the version of this regulation as published in the 2000 Code of Federal Regulations is applicable. *See* 20 C.F.R. §725.2(c).

On appeal, claimant challenges the administrative law judge's determination that the newly submitted medical opinions are insufficient to establish either the existence of pneumoconiosis or a material change in conditions. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has declined to address the merits of this appeal.<sup>4</sup>

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'Keefe 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 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, 718.202, 718.203, 718.204(2000). *Grant v. Director, OWCP*, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988).<sup>5</sup> 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*).

When a claimant files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that there has been a material change in conditions. 20 C.F.R. §725.309(d) (2000). The United States Court of Appeals for the Sixth Circuit has held that in

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<sup>4</sup>We affirm the administrative law judge's findings that claimant did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(3), as they are unchallenged on appeal. Decision and Order at 6; see *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>5</sup>This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because claimant's coal mine employment occurred in the State of Ohio. Director's Exhibit 2; see *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

determining whether a claimant has established a material change in conditions, the administrative law judge must determine whether the evidence developed since the prior denial establishes at least one of the elements previously adjudicated against claimant. *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

With respect to Section 718.202(a)(4) (2000), claimant argues that the administrative law judge erred in determining that the newly submitted opinion in which Dr. Singh diagnosed pneumoconiosis was entitled to less weight than the contrary opinions of record. This contention is without merit. Although claimant is correct in maintaining that significant weight may be accorded to a treating physician's opinion, the administrative law judge is not required to do so when he determines that the treating physician's opinion is not well documented and well reasoned. See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Tedesco v. Director, OWCP*, 18 BLR 1-103(1994). In this case, the administrative law judge acted within his discretion in finding that Dr. Singh's diagnosis of pneumoconiosis lacked support and detail sufficient to substantiate the diagnosis. The administrative law judge rationally determined that Dr. Singh's opinion was entitled to little weight since it was based, in part, upon the physician's positive x-ray reading, which is not contained in the record, and which conflicts with the uniformly negative interpretations of the newly submitted x-ray readings rendered by physicians who, unlike Dr. Singh, possessed special qualifications in the field of radiology. Claimant's Exhibit 1; Director's Exhibits 12, 17; Decision and Order at 6; see *Griffith, supra*; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge also acted within his discretion in finding that Dr. Singh's opinion lacked credibility as the doctor failed to adequately set forth the rationale for his diagnosis, overstated claimant's coal mine employment history by nine years, and failed to discuss the significance of claimant's lengthy smoking history. Decision and Order at 6; *Trumbo, supra*; *Clark, supra*; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988).

Moreover, it was also within the administrative law judge's discretion to accord greater weight to the contrary opinions of Drs. Altmeyer and Fino as well documented, reasoned and persuasive, since these physicians provided a thorough explanation of why the record evidence did not support a diagnosis of pneumoconiosis. Employer's Exhibits 1, 2; Decision and Order at 6; *Trumbo, supra*; *Clark, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Accordingly, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) (2000).

The administrative law judge is empowered to weigh and draw inferences from the medical evidence, 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, supra*. Consequently, we affirm the administrative law judge's findings that the newly submitted evidence of record is insufficient to establish the existence of pneumoconiosis, as they are supported by substantial evidence. We also affirm the administrative law

judge's determination that claimant failed to establish a material change in conditions, which precludes an award of benefits. 20 C.F.R. §725.309 (2000); *Ross, supra*.

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

SO ORDERED.

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

BETTY JEAN HALL  
Administrative Appeals Judge