

BRB No. 98-0630 BLA

BILLY J. RAMEY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ROBERT COAL COMPANY	)	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 of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-1768) of Administrative Law Judge Daniel F. Sutton 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). Claimant filed a claim on June 22, 1993. In a Decision and Order dated August 3, 1995, Administrative Law Judge Gerald M. Tierney found, *inter alia*, that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4).<sup>1</sup> Accordingly, the administrative law judge denied benefits. *Id.* Claimant subsequently appealed Judge Tierney's denial of benefits to the Board. However, by Order dated February 28, 1996, the Board dismissed claimant's appeal and remanded the case to the

---

<sup>1</sup>In an Order dated January 25, 1995, Administrative Law Judge Gerald M. Tierney dismissed Robert Coal Company as the responsible operator. Director's Exhibit 85. Judge Tierney also held that claimant's post-hearing submission of Dr. Fritzhand's October 14, 1994 report should not be admitted into the record. *Id.* The Director, Office of Workers' Compensation Programs (the Director), appealed Judge Tierney's Order to the Board. *Id.* On April 11, 1995, claimant filed a Motion to Remand, contending that the case should be remanded to the district director for consideration of Dr. Fritzhand's October 14, 1994 report. *Id.* By Order dated April 27, 1995, the Board held the Director's appeal in abeyance and remanded the case to the district director for modification proceedings. *Ramey v. Ramey Trucking Co.*, BRB No. 95-1113 BLA (Apr. 27, 1995) (Order) (unpublished). Thereafter, Judge Tierney, in a Decision and Order dated August 3, 1995, denied benefits. Director's Exhibit 83. By Order dated February 28, 1996, the Board, *inter alia*, dismissed the Director's earlier appeal (BRB No. 95-1113 BLA) as interlocutory. *Ramey v. Ramey Trucking Co.*, BRB No. 95-1113 BLA and 95-2046 BLA/A (Feb. 28, 1996) (Order) (unpublished).

district director for modification proceedings. *Ramey v. Ramey Trucking Co.*, BRB No. 95-1113 BLA and 95-2046 BLA/A (Feb. 28, 1996) (Order) (unpublished).

After the district director denied claimant's request for modification, the case was forwarded to the Office of Administrative Law Judges. Administrative Law Judge Daniel F. Sutton (the administrative law judge) held a hearing on July 24, 1997. Finding that claimant failed to demonstrate a change in conditions or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310, the administrative law judge denied claimant's request for modification. On appeal, claimant contends that the newly submitted medical opinion evidence is sufficient to establish 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), thereby establishing a change in conditions pursuant to 20 C.F.R. §725.310.<sup>2</sup> Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

---

<sup>2</sup>Claimant also contends that he is entitled to the presumption of total disability due to pneumoconiosis set out at 20 C.F.R. §718.305. However, because the instant claim was filed after January 1, 1992, the Section 718.305 presumption is not applicable. *See* 20 C.F.R. §718.305(e).

Claimant contends that the administrative law judge, in his consideration of the newly submitted medical opinion evidence, erred in not according greater weight to the opinions of Drs. Raschella and Mettu based upon their status as claimant's treating physicians. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that the opinions of treating physicians are entitled to greater weight than those of non-treating physicians. See *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). However, because the administrative law judge provided proper reasons for discrediting the opinions of Drs. Raschella and Mettu,<sup>3</sup> the administrative law judge was not required to give greater weight to their opinions. See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). Claimant's remaining statements regarding the administrative law judge's finding pursuant to 20 C.F.R. §725.310 merely point to evidence favorable to his position and amount to no more than a request to reweigh the evidence of record. Such a request is beyond the Board's scope of review. See *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). We, therefore, affirm the administrative law judge's finding that claimant failed to establish modification pursuant to 20 C.F.R. §725.310.

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

SO ORDERED.

---

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

---

<sup>3</sup>The administrative law judge found that Dr. Raschella's passing references to a history of black lung fell short of a diagnosis of the disease. Decision and Order at 13 n.6; Director's Exhibit 102; Claimant's Exhibits 1, 4. The administrative law judge further noted that Dr. Raschella's statements merely represented his recitation of claimant's reported medical history. *Id.* The administrative law judge properly found that Dr. Mettu's statement that coal mine dust "can cause the lung problem" was too equivocal to support a diagnosis of pneumoconiosis. See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); Decision and Order at 12; Claimant's Exhibit 3. Inasmuch as claimant does not challenge the administrative law judge's reasons for discrediting the opinions of Drs. Raschella and Mettu, these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

---

ROY P. SMITH  
Administrative Appeals Judge

---

JAMES F. BROWN  
Administrative Appeals Judge