

BRB No. 00-0157 BLA

RUDOLPH MLYNEK	)	
	)	
Claimant-Petitioner	)	DATE ISSUED:
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits on Remand from the Benefits Review Board of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Lynne G. Bressi (Law Offices of Charles A. Bressi, Jr.), Pottsville, Pennsylvania, for claimant.

Barry H. Joyner (Henry L. Solano, 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 the Director, Office of Workers' Compensation Programs, the United States Department of Labor.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order on Remand (94-BLA-1659) of Administrative Law Judge Paul H. Teitler denying benefits on a claim filed pursuant

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<sup>1</sup> Claimant is the miner, Rudolph Mlynek, who filed his initial application for benefits on June 7, 1983, which was denied on November 30, 1987. Director's Exhibits 1, 30. Claimant filed the present petition for modification on October 26, 1993. Director's Exhibit 68.

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). This case has been before the Board previously. In a Decision and Order issued on November 30, 1987, Administrative Law Judge Robert J. Feldman credited claimant with eleven years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718. Judge Feldman found that the evidence of record was insufficient to establish the presence of pneumoconiosis or total disability due to pneumoconiosis. Accordingly, benefits were denied.

Claimant filed a petition for modification on September 23, 1988, which was denied by Administrative Law Judge Paul H. Teitler on July 18, 1990, since claimant had not established that he was totally disabled due to pneumoconiosis, although he had established a change in condition pursuant to 20 C.F.R. §725.310 by demonstrating the existence of pneumoconiosis arising out of coal mine employment. On appeal, the Board affirmed the administrative law judge's findings regarding the number of years of coal mine employment and the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b), but remanded for reconsideration of the pulmonary function studies and medical reports of record pursuant to 20 C.F.R. §718.204(c)(1) and (4), as well as instructing the administrative law judge to consider all the evidence, both old and new, when considering whether entitlement had been established on remand. *Mlynek v. Director, OWCP*, BRB No. 90-1993 BLA (Sept. 25, 1992)(unpub.).

In his Decision and Order Upon Remand issued June 1, 1993, Judge Teitler again found that claimant had not established total disability due to pneumoconiosis. Accordingly, benefits were benefits.

Claimant filed the present petition for modification on October 26, 1993, which was denied on October 18, 1995, by Judge Teitler, who again determined that claimant had not established total disability due to pneumoconiosis, or a change in condition. Claimant appealed the denial to the Board, and the case was remanded for the administrative law judge to reconsider the pulmonary function studies of record pursuant to Section 718.204(c)(1). The Board also vacated the Section 718.204(c)(4) findings which had been based on the flawed Section 718.204(c)(1) findings. *Mlynek v. Director, OWCP*, BRB No. 96-0319 BLA (Mar. 26, 1997)(unpub.).

In a Decision and Order on Remand issued on November 8, 1997, the administrative law judge noted that claimant had previously established the presence of pneumoconiosis arising out of coal mine employment pursuant to Sections

718.202(a) and 718.203(b), and that a review of the record did not indicate that a mistake in a determination of fact had been demonstrated. Based on a review of the newly submitted evidence, the administrative law judge found that while total disability was not established pursuant to Section 718.204(c)(1)-(3), the newly submitted medical opinion evidence established total disability pursuant to Section 718.204(c)(4). The administrative law judge thus found that claimant had established a change in conditions pursuant to Section 725.310 as he was now totally disabled. After reviewing the entire record, however, the administrative law judge determined that total disability had not been established pursuant to Section 718.204(c)(1)-(4). Accordingly, benefits were denied.

Claimant appealed the denial of benefits to the Board and the Director, Office of Workers' Compensation Programs (the Director), filed a Motion to Remand in that appeal. The Board affirmed the administrative law judge's findings that there was no mistake in a determination of fact in the previous denial and that total disability was not established pursuant to Section 718.204(c)(2). The Board, however, held that the administrative law judge erred in his consideration of the medical evidence relevant to Section 725.310. Accordingly, the Board remanded the case to allow the administrative law judge to perform an independent assessment of the newly submitted evidence, in conjunction with the previously submitted evidence, to determine if the weight of the new evidence was sufficient to establish at least one element of entitlement which defeated entitlement in the prior decision in order to determine if modification was warranted under Section 725.310. Pursuant to Section 718.204(c)(4) the Board also instructed the administrative law judge to reconsider Dr. Krol's opinion and determine if the enumeration of specific physical limitations reflected claimant's assessment of his condition, or the physician's professional assessment, noting that if the limitations were those of Dr. Krol, they must be compared with the exertional requirements of claimant's usual coal mine work to determine whether his opinion supports a finding of total disability. The Board further determined that the administrative law judge erred in his consideration of Dr. Kraynak's opinion since the administrative law judge initially found that Dr. Kraynak's report was documented and reasoned and established that claimant was totally disabled but thereafter rejected Dr. Kraynak's opinion during his evaluation of all the evidence of record on the merits of the claim. The Board thus instructed the administrative law judge to reconsider and clarify his findings regarding Dr. Kraynak's report on remand. The Board also instructed the administrative law judge to clarify his findings regarding the opinion of Dr. Corazza, which found no evidence of a totally disabling respiratory or pulmonary impairment, noting that the administrative law judge erred in rejecting this report, based on his finding that Dr. Corazza incorrectly concluded that the arterial blood gas studies were normal, since the administrative law judge may not independently assess the medical evidence.

The Board also rejected claimant's contentions that the administrative law judge erred in crediting Dr. Ahluwalia's opinion and that he gave no reason for giving less weight to Dr. Kruk's opinion. Finally, the Board noted that if the administrative law judge found total respiratory disability established pursuant to Section 718.204(c) on remand, he must then determine whether claimant's pneumoconiosis is a contributing cause of his totally disabling respiratory pursuant to Section 718.204(b). *Mlynek v. Director, OWCP*, BRB No. 98-0374 BLA (May 4, 1999)(unpub.).

On remand for the second time, the administrative law judge found that the pulmonary function study evidence was insufficient to establish total disability pursuant to Section 718.204(c)(1) and that the medical opinion evidence was insufficient to establish total disability pursuant to Section 718.204(c)(4). Accordingly, benefits were denied. On appeal, claimant contends the administrative law judge erred in concluding that claimant did not have a totally disabling respiratory impairment due to pneumoconiosis. The Director responds, urging affirmance of the denial of benefits.

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 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish 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. Failure of claimant 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).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal 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.<sup>2</sup> With respect to

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<sup>2</sup> The administrative law judge's finding that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) is unchallenged on appeal and is therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Section 718.204(c)(4), the administrative law judge reconsidered the relevant medical evidence as instructed by the Board and rationally determined that the evidence of record was insufficient to establish total disability. In considering whether total disability was established by the medical opinions of record under Section 718.204(c)(4), the administrative law judge permissibly accorded diminished weight to the opinions of Drs. Kraynak and Kruk since he found that the doctors' reports were not well-reasoned and documented as the underlying objective tests did not support the physicians' conclusions. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-146 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); Decision and Order on Remand at 4. Moreover, the administrative law judge permissibly gave greater weight to the opinions of Drs. Ahluwalia, Krol and Corazza, that claimant did not have a totally disabling pulmonary impairment, since he found their opinions were supported by the objective evidence and since Dr. Corazza possesses superior qualifications. *Clark, supra*; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order on Remand at 5. Contrary to claimant's contention, the administrative law judge was not required to compare Dr. Krol's list of exertional limitations to claimant's usual coal mine employment as the administrative law judge found that since the pulmonary function study results were within normal limits, these were a recitation of claimant's subjective complaints. *Kowalchick v. Director, OWCP*, 893 F.2d 615, 13 BLR 2-226 (3d Cir. 1990); Decision and Order on Remand at 4. 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, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the medical opinions of record failed to establish total disability pursuant to Section 718.204(c)(4). Thus, we need not address claimant's contentions with respect to Section 718.204(b). Inasmuch as claimant has failed to establish total respiratory disability pursuant to Section 718.204(c), we affirm the administrative law judge's implicit finding that claimant failed to demonstrate a change in conditions pursuant to Section 725.310 as it is supported by substantial evidence and is in accordance with law. Furthermore, the Board previously affirmed the administrative law judge's conclusion that there was no mistake in a determination of fact in the prior denial. See *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (1995). Inasmuch as claimant has failed to establish modification pursuant to 20 C.F.R. §725.310, we affirm the denial of benefits.

Accordingly, the Decision and Order - Denial of Benefits on Remand from the Benefits Review Board of the administrative law judge denying modification and benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Acting  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge