



BRB No. 19-0339 BLA

JOHN E. LUCAS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 06/09/2020
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Request for Modification of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Edward Waldman (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits on Request for Modification (2018-BLA-05075) of Administrative Law Judge Theresa C. Timlin rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30

U.S.C. §§901-944 (2012) (the Act). This case involves a request for modification of the denial of a miner's claim filed on January 27, 2012.¹

The administrative law judge noted the parties stipulated to 14.39 years of coal mine employment² and to the existence of pneumoconiosis.³ She found the evidence filed in support of claimant's request for modification did not establish total disability or total disability due to pneumoconiosis. She therefore found claimant did not establish a basis for modification under 20 C.F.R. §725.310 and denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding the medical evidence insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b) and disability causation at 20 C.F.R. §718.204(c). The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.⁴

¹ Claimant filed his claim for benefits on January 27, 2012. Director's Exhibit 2. In a Decision and Order Denying Benefits dated November 9, 2015, Administrative Law Judge Adele Higgins Odegard found claimant did not establish total respiratory or pulmonary disability, or total disability due to pneumoconiosis. Director's Exhibit 35. Claimant appealed and the Board affirmed the denial of benefits. *Lucas v. Director, OWCP*, BRB No. 16-0123 BLA (Nov. 29, 2016) (unpub.); Director's Exhibit 36. On May 11, 2017, claimant filed a request for modification accompanied by supportive medical evidence. Director's Exhibit 37.

² Because claimant established less than fifteen years of qualifying coal mine employment, he is unable to invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4) (2012).

³ The administrative law judge noted claimant's concession to 14.93 years of coal mine employment in his brief filed with his modification request. Decision and Order at 3; Claimant's Brief in Support of His Modification Request at 5 n.1. In addition, she observed the Director, Office of Workers' Compensation Programs (the Director), conceded the existence of pneumoconiosis when the case was before Judge Odegard and, in this proceeding, the Director did not contest this issue. Decision and Order at 3 n.6; Director's Exhibits 35, 43.

⁴ We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established 14.39 years of coal mine employment and the existence of pneumoconiosis. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3 n.6.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's decision and order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁵ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to benefits under 20 C.F.R. Part 718 when the statutory presumptions are not available, claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Because this case involves a request for modification, the administrative law judge was required to consider whether claimant established either a change in conditions since the prior denial or a mistake in a determination of fact in the prior denial. *See* 20 C.F.R. §725.310; *Keating v. Director, OWCP*, 71 F.3d 1118, 1123 (3d Cir. 1995); *Jessee v. Director, OWCP*, 5 F.3d 723, 724-25 (4th Cir. 1993). In this case, the administrative law judge correctly observed claimant explicitly stated that he was requesting modification based on a change in conditions rather than a mistake in a determination of fact. Decision and Order at 3, 6; Claimant's Brief in Support of His Modification Request at 7.

Disability Causation

To establish he is totally disabled due to pneumoconiosis, claimant must prove pneumoconiosis is a substantially contributing cause of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); *see Bonessa v. U.S. Steel Corp.*, 884 F.2d 726, 734 (3d Cir. 1989). Pneumoconiosis is a substantially contributing cause of total disability if it has a material adverse effect on claimant's respiratory or pulmonary condition, or materially worsens a disabling impairment caused by a disease or exposure unrelated to coal mine employment. 20 C.F.R. §718.204(c)(1)(i), (ii).

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as claimant's coal mine employment occurred in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

In addressing disability causation,⁶ the administrative law judge considered the medical opinions of Drs. Kraynak and Cali. Decision and Order at 16-17. In a letter dated May 24, 2017, submitted in support of claimant's request for modification, Dr. Kraynak reported: claimant can walk only one-quarter to one-half of a block on level ground and climb several steps without experiencing shortness of breath; a pulmonary function study performed on February 22, 2017, produced an FEV1 that was 52% of predicted and an FVC that was 71% of predicted; claimant's complaints of shortness of breath, chronic cough and dyspnea on exertion have worsened; and he "has had a worsening of his disabling Black Lung condition." Director's Exhibit 37. In Dr. Cali's report on modification, he diagnosed simple pneumoconiosis and a moderate obstructive defect based on his examination of claimant on February 20, 2018. He opined claimant "cannot work anymore due to his underlying condition." Claimant's Exhibit 1.

The administrative law judge found the opinions Drs. Kraynak and Cali submitted on modification inadequately reasoned, as neither physician adequately explained the connection between pneumoconiosis and claimant's respiratory disability.⁷ Decision and Order at 16-17. Thus, she concluded claimant did not establish disability causation pursuant to 20 C.F.R. §718.204(c). *Id.* at 17.

Claimant contends that because the opinions of Drs. Kraynak and Cali are unequivocal and uncontradicted, he has established disability causation.⁸ Claimant's Brief

⁶ Based on her finding claimant failed to establish a change in condition regarding total disability, the administrative law judge found claimant could not establish a change in condition on disability causation. Decision and Order at 16. However, she assumed *arguendo* claimant was totally disabled and rendered findings on disability causation. *Id.* at 16-17.

⁷ The administrative law judge also found Dr. Kraynak did not cite any objective medical evidence to support his conclusion claimant is totally disabled due to pneumoconiosis in his May 8, 2014 opinion before Judge Odegard. Decision and Order at 17; Director's Exhibit 39. In a report dated May 8, 2013, also in the record before Judge Odegard, Dr. Cali determined claimant could not work in dusty environments due to his asthma and shortness of breath. Director's Exhibit 25. He did not identify the cause of the diagnosed conditions. *Id.*

⁸ Claimant also asserts the Director failed "to rebut a finding of entitlement." Claimant's Brief in Support of Petition for Review (Claimant's Brief) at 15. As mentioned previously, claimant was not entitled to invocation of the Section 411(c)(4) presumption because he had less than fifteen years of qualifying coal mine employment. *See* n.2 *supra*. Therefore, the burden of proof did not shift to the Director to disprove pneumoconiosis or

in Support of Petition for Review (Claimant's Brief) at 14-15. Contrary to claimant's argument, an administrative law judge is not required to credit an uncontradicted medical opinion she finds inadequately reasoned and documented. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Claimant does not point to any specific error in the administrative law judge's finding that the opinions of Drs. Kraynak and Cali on disability causation are unexplained and, therefore, inadequately reasoned. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986) (failure to make specific allegations of error precludes Board review and requires affirmance of the decision below.); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); Decision and Order at 16-17. Consequently, we affirm the administrative law judge's discrediting of the opinions of Drs. Kraynak and Cali.

Because claimant does not otherwise challenge the administrative law judge's finding that he failed to establish a change in conditions with respect to disability causation, this finding is affirmed. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 17; Claimant's Brief at 14-15. In light of claimant's not alleging a mistake in a determination of fact in the prior denial, the administrative law judge's finding of no change in condition on disability causation constitutes a finding that claimant did not establish this requisite element of entitlement on the merits.⁹ We therefore affirm the administrative law judge's determination that entitlement to benefits is precluded. *See Anderson*, 12 BLR at 1-112; Decision and Order at 17.

disability causation. Thus, claimant's assertions that "there was no evidence submitted by the Director *to rebut* a favorable finding" and "there is absolutely no evidence *to rebut* a finding of entitlement" are misplaced. Claimant's Brief at 6, 15 (emphasis added).

⁹ Because we have affirmed the administrative law judge's finding that claimant did not establish disability causation, an essential element of entitlement under 20 C.F.R. Part 718, we need not address claimant's arguments regarding total disability at 20 C.F.R. §718.204(b).

Accordingly, the administrative law judge's Decision and Order Denying Benefits on Request for Modification is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge