

BRB No. 99-0750 BLA

JAMES TOBIN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Carolyn M. Marconis, Pottsville, Pennsylvania, for claimant.

Dorothy L. Page (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, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (98-BLA-0655) of Administrative Law Judge Ainsworth H. Brown 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 Act). The administrative law judge found that claimant had filed three separate claims, the last of which was finally denied on May 18, 1992. Director's Exhibit 24. The claim was denied because claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Claimant filed a duplicate claim on September 26, 1997. Director's Exhibit 1. The Director, Office of Workers' Compensation Programs (the Director), conceded that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to Section 718.202(a) and 718.203(b), and the administrative

law judge therefore found that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309. *See Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995).¹ The administrative law judge weighed the evidence and determined, however, that claimant failed to establish total disability at Section 718.204(c), and therefore denied benefits. Claimant appeals, contending that the administrative law judge erred in his weighing of the pulmonary function studies and medical opinions pursuant to Section 718.204(c)(1) and (c)(4).² The Director responds, urging affirmance of the administrative law judge's Decision and Order.

The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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).

Claimant contends that the administrative law judge erred in failing to find that the pulmonary function studies establish total disability at Section 718.204(c)(1). We disagree. The evidence of record consists of seven pulmonary function studies, of which four yielded qualifying results. Although all four were judged valid by the administering physicians at the time of the test and in subsequent deposition testimony, they were all later interpreted as invalid by Drs. Sahillioglu or Levinson. Claimant's Exhibits 1, 4; Director's Exhibits 3, 9, 15, 17, 29. The administrative law judge permissibly credited the opinions of Drs. Sahillioglu and Levinson based on their expertise. Decision and Order at 5; *see Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Street v. Consolidation Coal Co.*, 7 BLR 1-65 (1984); *see also Prater v. Hite Preparative Co.*, 829 F.2d 1363, 10 BLR 2-297 (6th Cir. 1986). The administrative law judge further noted that the more recent tests resulted in non-qualifying values. We therefore affirm the administrative law judge's

¹ A previous administrative law judge had found that claimant established 16.9 years of coal mine employment. Director's Exhibit 26.

² We affirm the administrative law judge's finding that claimant failed to establish total disability at 20 C.F.R. §718.204(c)(2) and (3) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

weighing of the pulmonary function study evidence at Section 718.204(c)(1) and his finding that total disability was not established thereunder.

Claimant further contends that the administrative law judge erred in his weighing of the medical opinions at Section 718.204(c)(4). The evidence contains the opinions of three physicians. Drs. Kraynak and Kruk found claimant totally and permanently disabled due to pneumoconiosis. Director's Exhibits 7, 8, 16, 17; Claimant's Exhibits 1, 4. On the other hand, although Dr. Rashid diagnosed silicosis, he determined that claimant was not disabled. Decision and Order at 6; Director's Exhibits 19, 20, 26, 28. The administrative law judge found that Drs. Kraynak and Kruk were not supported by the objective evidence as the results of the blood gas studies were normal and the pulmonary function studies that they relied upon were discredited.³ The administrative law judge credited Dr. Rashid's findings because of his expertise in the field of pulmonary disease, and because his opinion was supported by the objective tests. Decision and Order at 6-7.

Claimant correctly contends, however, and the Director concedes, that although Dr. Rashid is board-certified in internal medicine, he is not a pulmonary disease specialist. Contrary to claimant's argument, however, this error is harmless as the administrative law judge relied on other valid grounds to credit his opinion, *i.e.*, properly concluding that Dr. Rashid's opinion outweighs the other opinions as it was more consistent with the objective tests. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Church v. Eastern Associated Coal Co.*, 20 BLR 1-8 (1996); *Carson v. Westmoreland Coal Co.*, 19 BLR 1-18 (1994); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Siwiec, supra*; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). We therefore affirm the administrative law judge's weighing of the medical opinions pursuant to Section 718.204(c)(4).

As claimant failed to establish total disability at Section 718.204(c), an essential element of entitlement, the administrative law judge properly denied benefits. *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*).

³ The administrative law judge also noted that Dr. Kraynak's physical findings contrasted with Dr. Rashid's. Decision and Order at 7.

Accordingly, the Decision and Order - Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge