

BRB No. 97-1185 BLA

BRADY BRADLEY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BUFFALO MINING COMPANY)	DATE ISSUED:
)	
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Brady Bradley, Wayne, West Virginia, *pro se*.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and Order (95-BLA-1949) of Administrative Law Judge Michael P. Lesniak 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). The administrative law judge, applying the regulations at 20 C.F.R. Part 718, credited the miner with fourteen years of coal mine employment and found the evidence insufficient to establish the existence of pneumoconiosis

¹ Claimant is Brady Bradley, the miner, who filed his present claim for benefits on November 17, 1994. Director's Exhibit 1. Claimant filed two previous claims for benefits on January 23, 1973 and July 11, 1985 which were finally denied on January 15, 1980 and January 6, 1993, respectively. Director's Exhibits 23, 24.

arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b) or respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b). Decision and Order at 4-6. Therefore, the administrative law judge also found that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309(d). Decision and Order at 6. Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's Decision and Order denying benefits. Employer responds, urging affirmance, and the Director, Office of Workers' Compensation Programs, as party-in-interest, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Inasmuch as this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, the administrative law judge considered the newly submitted evidence to determine whether claimant has established a material change in conditions pursuant to Section 725.309(d) in accordance with the holding of the Fourth Circuit court in *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227, (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). Under the Fourth Circuit court's holding in *Rutter*, to establish a material change in conditions the administrative law judge must consider all the new evidence to determine whether the miner has proven at least one of the elements of entitlement previously adjudicated against him. *See Rutter, supra*. As a disabling pulmonary condition was established in the prior claim, Director's Exhibit 23, the administrative law judge considered the new evidence to determine if claimant has established the existence of pneumoconiosis arising out coal mine employment or total respiratory disability due to pneumoconiosis.

Pursuant to Section 718.202(a)(1), considering the newly submitted x-ray evidence, the administrative law judge permissibly found this evidence insufficient to establish the existence of pneumoconiosis based on the numerous negative readings rendered by the physicians possessing superior qualifications. Decision and Order at 4; *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *see also Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). Therefore, we affirm the administrative law judge's finding that claimant has not established a material change in conditions by a preponderance of the x-ray

evidence.² See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

In considering the newly submitted medical opinion evidence pursuant to Sections 718.202(a)(4) and 718.204(b), the administrative law judge noted that both Drs. Ranavaya and Baker found claimant to have a totally disabling respiratory impairment due to pneumoconiosis from coal mine employment, Director's Exhibits 7; Claimant's Exhibit 1. Decision and Order at 4. Conversely, the administrative law judge noted that Drs. Zaldivar, Dahhan, Fino, Crisalli, Morgan, and Castle all found that claimant's pulmonary condition and disability was not in any way related to his coal mine employment, but to his cigarette smoking, Employer's Exhibits 2, 12, 14-18.

² There is no biopsy or autopsy evidence in this case, see 20 C.F.R. §718.202(a)(2), and the presumptions found at Sections 718.304, 718.305, and 718.306 are inapplicable to this living miner's claim filed after January 1, 1982, see *Kubachka v. Windsor Power House Coal Corp.*, 11 BLR 1-171 (1988), in which there is no evidence of complicated pneumoconiosis, see *generally Trent, supra*. Therefore, we deem harmless error, see *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), the administrative law judge's failure to determine whether claimant has established a material change in conditions pursuant to Section 718.202(a)(2)-(3).

The administrative law judge noted that the opinions of Drs. Zaldivar, Dahhan, Fino, Crisalli, Morgan, and Castle provided a more detailed rationale as to why the evidence is insufficient to establish “coal mine dust exposure as an etiology of Claimant’s disabling pulmonary condition” than Drs. Ranavaya and Baker did in establishing a connection between claimant’s coal mine employment and his disabling pulmonary condition. Decision and Order at 5. Therefore, the administrative law judge, within a proper exercise of his discretion, permissibly accorded greater weight to the opinions of Drs. Zaldivar, Dahhan, Fino, Crisalli, Morgan, and Castle because he found them to be “more well-reasoned and documented” than the opinions of Drs. Ranavaya and Baker. Decision and Order at 5-6; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Thus, we affirm the administrative law judge’s finding that claimant failed to demonstrate a material change in conditions by establishing the existence of pneumoconiosis arising out of coal mine employment or total disability due to pneumoconiosis.³ *See Maddaleni v. Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Kuchwara, supra*; *see also Barber v. U.S. Steel Mining Co., Inc.*, 43 F.3d 899, 19 BLR 2-61 (4th Cir. 1995); *Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990), citing *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990); *Shaffer v. Consolidation Coal Co.*, 17 BLR 1-56 (1992); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH

³ The administrative law judge noted that Drs. Zaldivar, Crisalli, Fino, Morgan, and Castle stated that even if pneumoconiosis were found to exist in this case, it would not change their opinion regarding the cause of claimant’s disabling pulmonary condition. Decision and Order at 6 n.4.

Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge