

BRB No. 02-0379 BLA

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

Appeal of the Decision and Order - Denying Request for Modification and Denying Benefits of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

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

Jennifer U. Toth (Howard M. Radzely, Acting 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: DOLDER, Chief Administrative Appeals Judge, McGRANERY, and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Request for Modification and Denying Benefits (01-BLA-0300) of Administrative Law Judge Paul H. Teitler rendered 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).¹ This case has been before the

¹ The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Board previously.² In a Decision and Order issued on February 11, 2002, the administrative law judge found that the new evidence submitted in support of claimant's request for modification of the prior denial was insufficient to establish that claimant's disability was due to pneumoconiosis. The administrative law judge found, therefore, that claimant failed to establish a change in conditions and denied claimant's request for modification. Accordingly, benefits were again denied.

On appeal, claimant contends that the administrative law judge committed several errors: that he failed to consider specifically whether a mistake in a determination of fact had been made in the prior decision denying benefits; that he failed to weigh the evidence adequately and that he failed to provide sufficient reasons to support his finding that claimant did not establish disability causation. In response, the Director, Office of Workers' Compensation Programs, urges that the administrative law judge's decision denying benefits and denying claimant's request for modification be affirmed.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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 into the Act by 30 U.S.C. §932(a); *O'Keefe*

² Claimant filed a claim for benefits on September 27, 1993. Director's Exhibit 145. It was denied by the Administrative Law Judge Robert D. Kaplan on July 24, 1995, because claimant failed to establish total disability. Director's Exhibit 47. The Board affirmed the denial of benefits on May 30, 1996. Director's Exhibit 58. Claimant subsequently submitted additional evidence and requested modification. Benefits were denied again by Judge Kaplan on April 16, 1998, because, while claimant established total disability, he failed to establish total disability due to pneumoconiosis; *i.e.*, disability causation. Director's Exhibit 86. In a Decision and Order issued September 29, 1999, the Board affirmed the denial of benefits. *See Laudenslager v. Director, OWCP*, BRB No. 98-1100 (September 29, 1999)(unpub.). Director's Exhibit 93.

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 prove 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 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)(*en banc*). In determining whether claimant's petition for modification should be granted, the administrative law judge must determine whether the claim has been erroneously denied. *See Keating v. Director, OWCP*, 71 F.3d 1118, 1123, 20 BLR 2-53, 2-62 (3d Cir. 1995); *Worrell v. Consolidation Coal Co.*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); *Jessee v. Director, OWCP*, 5 F.3d 723, BLR 2-26 (4th Cir. 1993).

Claimant first asserts that the administrative law judge erred in failing to specifically review all of the evidence of record to determine if a mistake in fact had been made. We disagree. The administrative law judge stated that he was incorporating into his decision the statement and analysis of the evidence set forth by Administrative Law Judge Robert D. Kaplan in his prior decisions. Further, the administrative law judge found that in their recently submitted reports, both Drs. Kraynak and Similaro reviewed the medical evidence of record, developed over the long history of this case, and that neither doctor had provided any basis for finding that a mistake in a determination of fact had been made by Judge Kaplan in his decision. Decision and Order at 5-6; Claimant's Exhibits 1, 3, 4. Accordingly, we reject claimant's assertion that the administrative law judge failed to consider earlier evidence and failed to determine whether a mistake in a determination of fact had been made by Judge Kaplan in his prior decision denying benefits.

Claimant next contends that the administrative law judge erred in his consideration of the evidence on disability causation. Specifically, claimant contends that the well-reasoned opinion of Dr. Kraynak, claimant's treating physician, which was supported by the opinions of Drs. Similaro and Prince, highly qualified pulmonologists, supports a finding of disability causation, and that the administrative law judge erred in not finding disability causation established based on these unrebutted opinions.³ Claimant further contends that the administrative law judge's decision fails to comply with the requirements of the Administrative Procedure Act which requires that the administrative law judge fully explain

³ Claimant withdrew Dr. Prince's opinion from the record in light of employer's objection to the admission of that opinion. Hearing Transcript at 5-6.

the reasons or basis for his findings and conclusions. 5 U.S.C. §557(c)(3)(A), incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a).

In concluding that the new evidence did not support claimant's request for modification, the administrative law judge found that Dr. Kraynak's letter of September 23, 2000 merely restated his earlier opinion, and provided no additional evidence regarding claimant's medical condition. Although Dr. Kraynak was claimant's treating physician, the administrative law judge found Dr. Kraynak's opinion neither well-reasoned nor well-supported because he had no records of claimant's prior hospitalizations for stroke or cardiac problems; he did not know who was claimant's treating physician for these conditions; he relied on an unreliable pulmonary function study; and he did not provide a basis for his conclusory statements that claimant was totally disabled by pneumoconiosis. Further, although acknowledging that Dr. Kraynak was claimant's treating physician, the administrative law judge found that his opinion was not entitled to greater weight based on his status as a treating physician because the doctor did not provide information to establish that he had a close relationship with claimant nor did he support his opinion with new clinical findings or objective laboratory testing although he did refer to ongoing treatment and examinations he conducted in "claimant's car."⁴

Concerning Dr. Similaro's opinion, the administrative law judge found his cursory and general statement that claimant's prior stroke had not led to any decrease in pulmonary function to be inadequate to establish that claimant's pneumoconiosis was a cause or substantially contributing cause of claimant's pulmonary disability because the administrative law judge found that the evidence showed that claimant's stroke had, in fact, caused extensive limitations, including paralysis, inability to speak, and difficulty swallowing. Further, contrary to claimant's contention, the lack of medical opinion evidence proffered by the Director to rebut claimant's evidence does not render claimant's evidence immune from criticism. *See Blackledge v. Director, OWCP*, 6 BLR 1-1060 (1984); *see generally Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 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).

In this case, therefore, the administrative law judge properly determined that neither the opinion of Dr. Kraynak, nor that of Dr. Similaro was sufficiently explained and

⁴ Although Dr. Kraynak stated that he examined claimant every three months and had treated claimant for ten years, he also stated that these examinations, conducted in claimant's car due to claimant's inability to walk after his stroke, did not involve any laboratory testing, but were conducted merely to give him the opportunity to listen to claimant's heart and lungs and review claimant's medication. *See Kraynak Dep.* at 12, 13, 15, 20, 21.

documented to support a finding of causation. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Claimant essentially seeks a reweighing of the evidence, which is beyond our scope of review. *See O’Keeffe, supra*; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Accordingly, the administrative law judge’s finding on disability causation is supported by substantial evidence and is, therefore, affirmed. Consequently, we affirm the administrative law judge’s denial of claimant’s request for modification as it is supported by substantial evidence.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge