BRB No. 97-0786 BLA

HOMER ADKINS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SCOTTS BRANCH COAL COMPANY	)	
	)	
Employer-Respondent	)	DATE ISSUED:
	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Homer Adkins, Pikeville, Kentucky, *pro se.*

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen), Washington, D.C., for employer.

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

PER CURIAM:

Claimant[1], without the assistance of counsel[2], appeals the Decision and Order (95-

[1]Claimant is Homer Adkins, the miner, who filed a claim for benefits on September 25, 1987. Director's Exhibit 1. The administrative law judge denied the claim on August 22, 1990 after finding that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) by applying the true doubt rule in weighing the x-ray evidence. The administrative law judge then found that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Director's Exhibit 59. On appeal, the Board affirmed the administrative law judge's finding pursuant to Section 718.204(c) and the denial of benefits. *Adkins v. Scotts Branch Co.,* BRB No. 90-2351 BLA (Sep. 23, 1992)(unpub.). On further appeal, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, affirmed the administrative

BLA-1026) of Administrative Law Judge Daniel A. Sarno, Jr., 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 found that claimant failed to establish the existence of pneumoconiosis and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.204, and, thus, failed to establish either a mistake in a determination of fact or a change in conditions pursuant to 20 C.F.R. §725.310. Accordingly, benefits were denied. On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate on appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. Pursuant to 20 C.F.R. §725.310, claimant may, within a year of a final order, request modification of the order. Modification may be granted if there are changed circumstances or there was a mistake in a determination of fact in the earlier decision. *See*

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law judge's findings pursuant to Sections 718.202(a)(1) and 718.204(c) and the denial of benefits. *Adkins v. Director, OWCP*, No. 92-4018 (Mar. 18, 1993)(unpub.); Director's Exhibit 69. Claimant filed a petition for modification on March 30, 1993. Director's Exhibits 70, 71.

[2]Susie Davis, a benefits counselor with the Kentucky Black Lung Association, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Davis is not representing claimant on appeal. *See* 20 C.F.R. §§802-211(e), 802.220; *Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

33 U.S.C. §922; 30 U.S.C. §932(a); 20 C.F.R. §725.310; *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 16 BLR 1-71 (1992), modifying 14 BLR 1-156 (1990); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971).

In support of his petition for modification, claimant submitted non-qualifying[3] pulmonary function and arterial blood gas studies performed by Dr. Wright. Director's Exhibit 72. The record also contains newly submitted non-qualifying pulmonary function and arterial blood gas studies performed by Dr. Broudy. Employer's Exhibit 3. The administrative law judge properly found that the newly submitted pulmonary function and arterial blood gas studies are insufficient to establish total respiratory disability pursuant to Section 718.204(c)(1) and (2). Decision and Order at 8. Also, because there is no evidence of cor pulmonale with right sided congestive heart failure, the evidence does not support a finding of total respiratory disability pursuant to Section 718.204(c)(3).

Claimant also submitted the report of Dr. Wright, who opined that claimant has occupational disability based upon the x-ray evidence of pneumoconiosis. Director's Exhibit 72. The record also contains the newly submitted opinions of Drs. Broudy, Fino, Chandler and Lane, none of whom opined that claimant has total respiratory disability. Employer's Exhibits 2-4, 7, 12, 13, 17. Because none of the newly submitted medical opinions diagnose total respiratory disability, the administrative law judge properly found that the newly submitted medical opinion evidence is insufficient to establish total respiratory disability pursuant to Section 718.204(c)(4).[4] Decision and Order at 8. The

[3]A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

[4]The administrative law judge found that Dr. Wright did not indicate that claimant is totally disabled and rationally concluded that his opinion is not well reasoned because he does not explain how he can base claimant's disability upon an x-ray interpretation,

administrative law judge then considered the newly submitted evidence in conjunction with the prior evidence, which was previously found to be insufficient to establish total respiratory disability pursuant to Section 718.204(c)(4), and found that claimant failed to establish total respiratory disability by the weight of either the newly submitted evidence or the evidence as a whole. Decision and Order at 8. The administrative law judge then found that claimant failed to establish either a change in conditions or a mistake in a determination of fact pursuant to Section 725.310. Decision and Order at 8.

The administrative law judge is empowered to weigh the 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 v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)*(en banc); Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Thus, we affirm the administrative law judge's findings that claimant failed to establish total respiratory disability pursuant to Section 718.204 and therefore failed to establish a change in conditions or a mistake in a determination of fact pursuant to Section 725.310 as they are supported by substantial evidence and in accordance with law.

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notwithstanding normal pulmonary function and arterial blood gas study values. Decision and Order at 8; Director's Exhibit 72; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *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); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

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
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge