

BRB No. 97-1396 BLA

ALEX PRATER)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
WOLF PENN COAL COMPANY)	
)	
and)	
)	
OLD REPUBLIC INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
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 J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Research & Defense Fund of Kentucky, Inc.), Prestonsburg, Kentucky, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (96-BLA-200) of Administrative Law Judge Daniel J. Roketenetz 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). Claimant filed a request for modification of his previously denied claim on April 17, 1995.¹ After consideration of the newly

¹The relevant procedural history of this case is as follows: Claimant filed his claim for benefits with the Department of Labor on November 1, 1975. Director's Exhibit 1. In a Decision and Order dated May 2, 1985, Administrative Law Judge Bernard J. Gilday, Jr., credited claimant with nineteen years of coal mine employment, found invocation of the interim presumption established pursuant to 20 C.F.R. §727.203(a)(4) and no rebuttal pursuant to 20 C.F.R. §727.203(b). Accordingly, benefits were awarded. Employer appealed and in *Prater v. Wolfe Pen Coal Co.*, BRB No. 85-1311 BLA (Sept. 30, 1987) (unpub.), the Board vacated the administrative law judge's finding pursuant to 20 C.F.R. §727.203(a)(4) and remanded the case for consideration of the physical limitations claimant described to his physicians in relation to the exertional requirements of his former coal mine employment. On remand, the administrative law judge found that claimant failed to

submitted x-ray, pulmonary function study, blood gas study and medical opinion evidence as well as the evidence of record prior to the request for modification, the administrative law judge found that although claimant established a mistake in a determination of fact in Judge Gilday's earlier decision, the medical evidence failed to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to the provisions of 20 C.F.R. Part 727 or 20 C.F.R. Part 718. Accordingly, benefits were denied. In the instant appeal, claimant contends that the administrative law judge erred in his weighing of the medical opinion evidence. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(4) and further found that claimant failed to establish entitlement pursuant to 20 C.F.R. §410.490 and 20 C.F.R. Part 410, Subpart D. Accordingly, benefits were denied. Claimant appealed and in *Prater v. Wolf Pen Coal Co.*, BRB No. 88-0258 BLA (July 29, 1992) (unpub.), the Board affirmed the administrative law judge's finding pursuant to 20 C.F.R. §727.203(a)(4), but remanded the case for consideration pursuant to 20 C.F.R. Part 718. On remand, the administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), but failed to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. Claimant appealed and in *Prater v. Wolf Pen Coal Co.*, BRB No. 93-0676 BLA (Apr. 26, 1994) (unpub.), the Board affirmed the denial of benefits.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and contains no reversible error therein. Initially, claimant contends that the administrative law judge erred in failing to find the evidence sufficient to establish invocation of the interim presumption pursuant to Section 727.203(a)(4).² Claimant alleges that Judge Gilday's mistake in a determination of fact precluded invocation of the interim presumption in the prior decision and that correction of the mistake requires a finding that invocation is established herein by the medical opinions. We disagree. The administrative law judge, based on claimant's testimony at the prior hearing and the hearing on modification, found a mistake in the determination of a fact had occurred in the prior decision by Judge Gilday. The administrative law judge found that claimant's work was sustained and strenuous manual labor while Judge Gilday had found that the evidence did not establish that claimant performed strenuous manual labor on a sustained basis. Decision and Order at 9. The administrative law judge, however, also concluded that the correction of the mistake would not change the outcome of this case based on the medical evidence considered and credited by Judge Gilday as well as the newly submitted evidence. Decision and Order at 9-10. In finding that Judge Gilday's mistake would not have affected the outcome in the prior decision, the administrative law judge concluded that whether or not claimant's usual coal mine employment was strenuous, Judge Gilday properly relied on the opinions of Drs. O'Neill and Anderson, both of whom possessed superior qualifications to the other physicians and found no impairment, to find that invocation pursuant to Section 727.203(a)(4) was not established. Decision and Order at 9-10. In considering whether total disability was established pursuant to Section 727.203(a)(4) based on the newly submitted evidence, the administrative law judge permissibly credited the opinions of Drs. Dahhan, Broudy and Fino, which found that claimant was not totally disabled from a respiratory standpoint, based on their superior qualifications, *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and because their conclusions were better reasoned as they were supported by the credible objective medical evidence. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-291 (1984); Decision and Order at 9-12; Director's Exhibit 71; Employer's Exhibits 1-2.

²The administrative law judge's findings with respect to the x-ray evidence, pulmonary function study evidence and blood gas study evidence and whether this evidence would establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1)-(3), total disability pursuant to 20 C.F.R. §718.204(c)(1)-(2) or a change in conditions pursuant to 20 C.F.R. §725.310 are unchallenged on appeal and therefore are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Moreover, contrary to claimant's assertion, although Dr. Dahhan examined claimant only one time, the administrative law judge was not required to disregard his opinion on this basis alone and defer to claimant's treating physician, Dr. Jurich, inasmuch as the administrative law judge found that Dr. Jurich provided an equivocal explanation for his diagnosis and conclusions. *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1988); *Piccin v. Director, OWCP*, 6 BLR 1-616 (1983); Decision and Order at 10-11. In addition, the administrative law judge properly accorded less weight to the opinions of Drs. Sundaram and Adams in light of their reliance on invalidated pulmonary function studies. See *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Piccin, supra*; Decision and Order at 11. Accordingly, the administrative law judge properly found that the medical reports of record failed to establish total disability pursuant to Section 727.203(a)(4). Thus, we affirm the administrative law judge's finding that the evidence of record was insufficient to establish the existence of a totally disabling respiratory or pulmonary impairment and thus insufficient to establish invocation of the interim presumption pursuant to Section 727.203(a)(4) or claimant's burden at 20 C.F.R. §718.204(c)(4). Consequently, we affirm the administrative law judge's denial of modification and benefits as supported by substantial evidence.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge