

BRB No. 01-0919 BLA

CHARLES HASHIN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
READING ANTHRACITE COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
LACKAWANNA CASUALTY 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 Denying Benefits On Modification of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

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

William E. Wyatt, John J. Notarianni (Fine, Wyatt and Carey, P.C.), Scranton, Pennsylvania, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits On Modification (00-BLA-0905) of Administrative Law Judge Ainsworth H. Brown 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).<sup>1</sup> The administrative law judge found,

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<sup>1</sup> The Department of Labor has amended the regulations implementing the

and the parties stipulated to thirty-five years of coal mine employment and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>2</sup> Considering the duplicate

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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, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

<sup>2</sup> Claimant filed his first claim for benefits on April 28, 1987. That claim was finally denied on September 1, 1998 by Administrative Law Judge Thomas W. Murrett, because claimant failed to establish the existence of pneumoconiosis, and not pursued. Director's Exhibit 19. Claimant filed the instant claim for benefits on April 24, 1990. This claim was denied by Administrative Law Judge Paul H. Teitler on November 6, 1991. Director's Exhibits 1, 12, 20, 35, 36. Claimant filed a petition for modification of the denial on October 5, 1992, which was denied by Administrative Law Judge Robert D. Kaplan on November 15, 1994. Director's Exhibits 37, 52, 59, 99, 100. On appeal, the Board affirmed the denial on August 24, 1995 in *Hashin v. Reading Anthracite Co.*, BRB No. 95-0708 BLA (Aug. 24,

claim record, the administrative law judge concluded that the evidence failed to establish the existence of pneumoconiosis, and failed therefore to establish a material change in conditions. Accordingly, benefits were denied.

On appeal, claimant contends that the evidence is sufficient to establish the existence of pneumoconiosis and total disability due to pneumoconiosis and thus, entitlement to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, is not participating 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 into the Act by 30 U.S.C. §932(a); *O'Keefe 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 establish 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 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*).

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1994)(unpub.). Director's Exhibit 108. On November 16, 1995, claimant filed a second petition for modification, which was denied by Administrative Law Judge Kaplan on November 17, 1997. Director's Exhibit 148. Claimant appealed to the Board again and the Board again affirmed the administrative law judge's denial of benefits on December 8, 1998 in *Hashin v. Reading Anthracite Co.*, BRB No. 98-0401 BLA (Dec. 8, 1998)(unpub.). The Board denied claimant's Motion for Reconsideration on July 15, 1999. Claimant filed a third Petition for Modification on November 8, 1999, Director's Exhibits 161, 162, 176, the denial of which is now before us on appeal.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence in the duplicate claim record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error.<sup>3</sup> See *Piccin v. Director, OWCP*, 6 BLR 1- 616 (1983). Contrary to claimant's contention, the administrative law judge rationally found that the evidence in the duplicate claim record was insufficient to establish the existence of pneumoconiosis based on the preponderance of negative readings by physicians with superior qualifications. Decision and Order at 12; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); see *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993).

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<sup>3</sup> The administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) and (3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The administrative law judge also considered the medical opinions in the duplicate claim record and rationally found them insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).<sup>4</sup> Contrary to claimant's contention, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Levinson finding no pneumoconiosis, than to the contrary opinion of Dr. Tavarria because he found it better reasoned, documented, supported by the objective evidence of record and because of Dr. Levinson's superior qualifications. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998). The administrative law judge was not required to accord greater weight to the opinion of Dr. Tavarria in this case solely because he was claimant's treating physician. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Schaaf v. Matthews*, 574 F.2d 157, 160 (3d Cir. 1978); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *see Hicks, supra*; *Cf. Mancina v. Director, OWCP*, F.3d , 21 BLR 2-215 (3d Cir. 1997). We therefore affirm the administrative law judge's finding that the evidence in the duplicate claim record was insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) as it is supported by substantial evidence and is in accordance with law.

The administrative law judge is empowered to weigh the medical 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 Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Clark, supra*. Consequently, we affirm the administrative law judge's finding that the evidence in the duplicate claim record has failed to establish the existence of pneumoconiosis.<sup>5</sup> *See Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d); *Hess v. Director, OWCP*, 21 BLR 1-141 (1998); *see also Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997); *Trent, supra*; *Perry, supra*.

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<sup>4</sup> These opinions consist of the report of Dr. Tavarria, claimant's treating physician, diagnosing coronary artery disease, diabetes, and pneumoconiosis, Claimant's Exhibit 6, and the report of Dr. Levinson finding arteriosclerotic heart disease, diabetes, but no pneumoconiosis or other coal dust related condition, Employer's Exhibit 3.

<sup>5</sup> We need not address claimant's contentions with regard to disability and disability causation pursuant to Section 718.204 as we have affirmed the administrative law judge's finding that the existence of pneumoconiosis was not established. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Accordingly, the administrative law judge's Decision and Order Denying Benefits On Modification is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge