

BRB Nos. 98-1079 BLA and
98-1079 BLA-A

PAUL VERNON GREEN)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
ISLAND CREEK COAL COMPANY)	DATE ISSUED:
)	
Employer-Respondent)	
Cross-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Modification Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order on Modification Denying Benefits (97-BLA-0354) of Administrative Law Judge Pamela Lakes Wood on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act

¹ Claimant is Paul Vernon Green, who filed his application for benefits on May 11, 1993. Director's Exhibit 1.

of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Employer cross-appeals the administrative law judge's Decision and Order on Modification. In the initial Decision and Order, Administrative Law Judge Edith Barnett properly adjudicated this claim pursuant to 20 C.F.R. Part 718 and found that, while claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203, he failed to demonstrate total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied. Director's Exhibit 47. Claimant filed an appeal with the Board and employer filed a cross-appeal. Director's Exhibits 48, 49. However, claimant filed a motion to withdraw his appeal, which was uncontested by employer, and accordingly, the Board dismissed both claimant's appeal and employer's cross-appeal. *Green v. Island Creek Coal Co.*, BRB No. 96-111 BLA-A (Jan. 30, 1996)(unpub. Order); *Green v. Island Creek Coal Co.*, BRB No. 96-111 BLA (Jan. 19, 1996)(unpub. Order); Director's Exhibits 57, 59, 60. On May 6, 1996, claimant filed a petition for modification with supporting medical evidence. Director's Exhibit 62. The district director denied modification, Director's Exhibit 65, and based on claimant's request, forwarded the claim to the Office of Administrative Law Judges for a formal hearing.

Administrative Law Judge Pamela Lakes Wood (administrative law judge) was assigned the case and reviewed claimant's petition for modification pursuant to 20 C.F.R. §725.310. The administrative law judge found that claimant failed to demonstrate either a mistake in a determination of fact or a change in conditions under 20 C.F.R. §725.310 based on claimant's failure to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, the administrative law judge denied benefits on modification.

On appeal, claimant contends that the administrative law judge erred by failing to find total disability under Section 718.204(c)(4). In response, employer urges affirmance of the denial of benefits. On cross-appeal, employer contests the administrative law judge's failure to find a mistake in a determination of fact with respect to the previous administrative law judge's Section 718.202(a)(4) finding. The Director, Office of Workers' Compensation Programs, as party-in-interest, has filed a letter indicating he will not participate in either appeal.²

² We affirm the administrative law judge's findings pursuant to Section 718.204(c)(1)-(3) inasmuch as these findings are unchallenged on appeal. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6

BLR 1-710 (1983); Decision and Order on Modification at 7.

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 the 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).

Claimant argues that the administrative law judge erroneously failed to accord greater weight to the opinion of Dr. Sundaram, who opined that claimant is totally disabled and unable to indulge in any gainful employment. Claimant contends that because Dr. Sundaram is his treating physician, his opinion is entitled to probative weight. Director's Exhibit 71; Claimant's Exhibit 2. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that the opinions of treating physicians are entitled to greater weight than those of non-treating physicians. *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Sexton v. Director, OWCP*, 752 F.2d 213, 7 BLR 2-102 (6th Cir. 1985). However, because the administrative law judge provided proper reasons for according less weight to Dr. Sundaram's opinion, she was not required to mechanically accord this physician's opinion dispositive weight. See *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). The administrative law judge, within a proper exercise of her discretion, found the opinions of Drs. Dahhan, Fino, Iosif, and Jarboe, who opined that, from a pulmonary standpoint, claimant retains the respiratory capacity to perform his last coal mining job, entitled to determinative weight inasmuch as these physicians' opinions were more consistent with the credible and valid, objective medical evidence, see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985), and were rendered by physicians with demonstrated pulmonary expertise,³ see *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); Decision and Order on Modification at 7; Employer's Exhibits 2, 3, 5-8, 10-14. We, therefore, affirm the administrative law judge's finding that claimant failed to establish total disability pursuant to Section 718.204(c)(4). See *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Inasmuch as claimant has not raised any other allegation of error with respect to the administrative law judge's analysis of the medical evidence under Section 718.204(c), we affirm the administrative law judge's determination that claimant failed to establish either a mistake in a determination of fact or a change in conditions under Section 725.310. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227,

³ Drs. Dahhan, Fino, Iosif, and Jarboe are all Board-certified in internal medicine and the subspecialty of pulmonary medicine, Employer's Exhibits 2, 3, 5, 6, whereas Dr. Sundaram's medical qualifications are not of record.

18 BLR 2-290 (6th Cir. 1994); *Kingery v. Hunt Branch Coal Co.*, 19 BLR 1-6, 1-11 (1994)(*en banc*); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993); Decision and Order on Modification at 7.

Accordingly, the Decision and Order on Modification denying benefits of the administrative law judge is affirmed.⁴

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

⁴ Our affirmance of the administrative law judge's denial of benefits obviates the need to address the arguments raised in employer's cross-appeal.