

BRB No. 05-0457 BLA

STANLEY C. TOPOLSKI)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 11/30/2005
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

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

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (04-BLA-0136) of Administrative Law Judge Ralph A. Romano denying benefits on a subsequent claim¹ filed pursuant to the

¹ Claimant, Stanley C. Topolski, filed his first application for benefits on December 2, 1992, which was denied by Administrative Law Judge Ralph A. Romano on January 5, 1995 and affirmed by the Board. *Topolski v. Director, OWCP*, BRB No. 95-0935 BLA (Sep. 15, 1997) (unpub.); Director's Exhibit 15. Claimant filed a petition for modification on March 24, 1998 and, after a formal hearing, Administrative Law Judge Paul H. Teitler denied benefits on September 27, 1999. Director's Exhibit 15. Claimant did not pursue that claim further, but instead, filed a second application for benefits on January 19, 2001. Director's Exhibit 1. Subsequent to the district director's denial of this claim, a formal hearing was held before Administrative Law Judge Ainsworth H. Brown. Prior to rendering a decision, however, Judge Brown died and the case was

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). Adjudicating this subsequent claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that the Director, Office of Workers' Compensation Programs (the Director) conceded that a material change in conditions pursuant to 20 C.F.R. §725.309 was demonstrated based on claimant's having affirmatively established a totally disabling respiratory impairment. Therefore, the administrative law judge conducted a review of all the evidence of record on the merits of entitlement. The administrative law judge found that claimant failed to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c) and, accordingly, denied benefits.

On appeal, claimant argues that the administrative law judge erred in failing to find total disability due to pneumoconiosis established; in failing to provide an adequate explanation and rationale for his findings; in substituting his medical judgment for that of the physicians; and in selectively analyzing constituent parts of the medical opinions. The Director responds, urging affirmance of the denial of benefits.²

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In this case, the administrative law judge assigned determinative weight to the opinion of Dr. Spagnolo that claimant's pulmonary disability was due solely to the removal of his entire right lung because of cancer, that his remaining lung functioned normally, and that coronary artery disease caused claimant's shortness of breath, based

reassigned to Administrative Law Judge Robert D. Kaplan. Judge Kaplan adjudicated the claim and denied benefits. Director's Exhibit 60. Thereafter, claimant appealed and the Board affirmed in part and vacated in part the denial of benefits and remanded the case for further evidentiary development. *Topolski v. Director, OWCP*, BRB No. 02-0886 BLA (Sep. 24, 2003) (unpub.); Director's Exhibit 78. Accordingly, the record was supplemented with a report by Dr. Spagnolo. The district director then considered the entire record and issued an order denying benefits on March 30, 2004, whereupon claimant requested a formal hearing and, although a hearing was scheduled, it was not held based on the parties' agreement that a decision could be rendered on the record.

² We affirm the administrative law judge's determination pursuant to 20 C.F.R. §725.309 because this determination is unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 4.

upon Dr. Spagnolo's persuasive, unequivocal reasoning supporting his opinion as well as his superior pulmonary expertise, demonstrated by his position as the director of the pulmonary disease division at the George Washington University. In challenging the administrative law judge's analysis of the medical opinion evidence, claimant argues that the administrative law judge erred by summarily dismissing the medical opinions of Drs. Kraynak and Simelaro because it is incumbent upon an administrative law judge to provide an adequate explanation or rationale for his weighing of the evidence and to render sufficient findings of fact and conclusions of law in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). Specifically, claimant contends that the administrative law judge erred in failing to accord dispositive weight to the opinion of Dr. Kraynak, because he has been claimant's treating physician since March 1994: he possesses a greater familiarity with claimant's pulmonary condition and occupational, social, and medical histories and has personally administered pulmonary function studies to claimant. Claimant argues further that the administrative law judge failed to address Dr. Kraynak's treating physician status when assessing the credibility of the conflicting medical opinions.

Contrary to claimant's contention, however, the administrative law judge fully explained his findings of fact and conclusions of law and provided a complete analysis of the conflicting evidence on causation under Section 718.204(c) and rendered a Decision and Order that comports with the APA. In analyzing the medical opinion evidence, the administrative law judge found that claimant had been undergoing treatment by Dr. Kraynak for severe pneumoconiosis since March 1994, Decision and Order at 5-6, but permissibly concluded that Dr. Kraynak's opinion was neither well-reasoned nor well-documented, and therefore, was entitled to less weight. The administrative law judge, within a rational exercise of his discretion, accorded less weight to Dr. Kraynak's opinion because his rationale for attributing claimant's total disability to coal workers' pneumoconiosis was not persuasive in light of the other conditions from which claimant suffers, namely, lung cancer, coronary artery disease, hypertension, and elevated cholesterol, and because Dr. Kraynak, who is not Board-certified in any medical specialty, possessed less demonstrated medical and pulmonary expertise than did the other physicians of record who were highly qualified. *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *accord Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003) (opinions of treating physicians entitled to deference based on their power to persuade); *Consolidation Coal Co. v. Held*, 314 F.3d 184, 187-188, 22 BLR 2-564, 2-571 (4th Cir. 2002); Director's Exhibits 15, 47; Claimant's Exhibit 3. Because the administrative law judge acknowledged Dr. Kraynak's treating physician status but nevertheless, reasonably determined that Dr. Kraynak's opinion was entitled to less weight, we reject claimant's argument. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); Decision and Order at 5-6.

Claimant also asserts that the administrative law judge erred in failing to credit the opinion of Dr. Simelaro, a highly qualified pulmonologist, who opined that claimant was totally and permanently disabled by virtue of his coal workers' pneumoconiosis in a detailed, well-reasoned, and comprehensive report. After reviewing the medical opinions, the administrative law judge was not persuaded by Dr. Simelaro's opinion that claimant's adenocarcinoma of the lung was "most likely" attributable to his coal mining exposure as opposed to tobacco abuse. Decision and Order at 6. The administrative law judge also found that Dr. Simelaro failed to explain his conclusion that claimant's coronary artery disease was caused by coal mine dust exposure after the doctor had indicated several other ailments from which claimant suffered which could have caused the disease. Decision and Order at 5, 6; Claimant's Exhibits 1, 2. The administrative law judge determined that Dr. Simelaro's disability causation assessment was equivocal and his discussion concerning the etiology of claimant's lung cancer and heart condition was less persuasive than that of Dr. Spagnolo; the administrative law judge concluded that Dr. Simelaro's opinion, like that of Dr. Kraynak, was not well-reasoned or well-documented. This was permissible. See *Balsavage v. Director, OWCP*, 295 F.3d 390, 395, 22 BLR 2-386, 2-396 (3d Cir. 2002); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532 n.9, 21 BLR 2-323, 2-335 n.9 (4th Cir. 1998) (in weighing medical opinions, administrative law judge should consider quality of experts, opinion's reasoning, physician's reliance on objectively determinable symptoms and established science, detail of analysis, and freedom from irrelevant distractions and prejudices); *Lango*, 104 F.3d at 577, 21 BLR at 2-20; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-10 (1985). Accordingly, the administrative law judge's discounting of the opinions of Drs. Kraynak and Simelaro was rational and supported by substantial evidence. See *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989) (administrative law judge need not accept opinion of any particular medical expert, but must weigh all evidence and draw his own conclusions and inferences). Hence, we reject claimant's arguments because credibility determinations are matters of consideration for the administrative law judge, and if rational and supported by substantial evidence, shall not be disturbed. See *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Trumbo*, 17 BLR at 1-88-89; *Clark*, 12 BLR at 1-149; *Lucostic v. U. S. Steel Corp.*, 8 BLR 1-46 (1985); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984); Decision and Order at 6-7.

Claimant alleges further that the administrative law judge selectively analyzed fundamental parts of the medical opinions of Drs. Kraynak and Simelaro and, in so doing, mischaracterized their opinions by ignoring the findings underlying their conclusions. Claimant, however, has not provided any support for that assertion, nor does a review of the evidence and the administrative law judge's Decision and Order reveal a selective analysis of the medical opinion evidence. Because the administrative

law judge's analysis constituted a proper evaluation of the medical evidence, we reject claimant's contention and affirm the administrative law judge's determinations that the credible evidence of record was insufficient to establish total disability due to pneumoconiosis pursuant to Section 718.204(c), a requisite element of entitlement under Part 718, and that entitlement to benefits is precluded in this case. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge