

BRB No. 00-1164 BLA

STANLEY J. STASIUM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits (Upon Third Remand by the Benefits Review Board) of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Harry T. Coleman (Abrahamsen, Moran & Conaboy, P.C.), Scranton, Pennsylvania, for claimant.

Helen H. Cox (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order - Denying Benefits (Upon Third Remand by the Benefits Review Board) (96-BLA-0551) of Administrative Law Judge Robert D. Kaplan 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> This case is

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

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit

before the Board for the fourth time.<sup>2</sup> On remand, the administrative law judge found that the Board had previously affirmed his finding that the evidence failed to establish the presence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) - (3) (2000). Reconsidering the medical opinion evidence at 20 C.F.R. §718.202(a)(4)(2000), the administrative law judge again determined that claimant failed to establish the presence of pneumoconiosis. The administrative law judge then concluded that the medical evidence as a whole failed to

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would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

<sup>2</sup>In its most recent decision in this case, the Board vacated the findings pursuant to 20 C.F.R. §718.202(a)(4)(2000), holding that the administrative law judge erred in determining that opinions by Drs. Aquilina and Majernick were entitled to less weight because the physicians relied on a length of coal mine employment which differed from the administrative law judge's findings. The Board remanded the case for further consideration of the medical opinion evidence and Section 718.202(a) (2000) pursuant to *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2000). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge's consideration of the evidence pursuant to Section 718.202(a)(4)(2000) is erroneous.<sup>3</sup> The Director, Office of Workers' Compensation Programs (the Director), has responded, urging affirmance.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. We reject claimant's contention that the administrative law judge erred on remand in utilizing "[a] more in depth view" of the medical opinion evidence than used in the prior three decisions in this case. Claimant's Brief at 7. Contrary to claimant's contention, because the Board vacated the administrative law judge's previous findings pursuant to Section 718.202(a)(4) (2000), the administrative law judge was required on remand to address all relevant evidence and provide a sufficient rationale for his findings in accordance with the Administrative Procedure Act. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and U.S.C. §923(a). *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

In considering the medical opinion evidence, the administrative law judge determined that Drs. Aquilina, Majernick, Ramakrishna, and Levinson submitted opinions which were reasoned and documented. Decision and Order on Third Remand at 6-7. The administrative law judge further found, however, that since Dr. Aquilina relied upon a May 9, 1996 x-ray and an opinion by Dr. Cali, neither of which is contained in the record, the physician's opinion that claimant's suffers from pneumoconiosis, is entitled to less weight. *Id.* The administrative law judge concluded that the opinions of Drs. Ramakrishna and

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<sup>3</sup>The administrative law judge's findings pursuant to Section 718.202(a)(1) - (3) (2000) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Levinson that claimant does not have pneumoconiosis outweigh the contrary opinions of Drs. Majernick and Aquilina. Decision and Order on Third Remand at 7. The administrative law judge further determined that even if Dr. Aquilina's opinion was entitled to full weight, the evidence would be in equilibrium and would not carry claimant's burden. *Id.* The administrative law judge additionally found that the opinions of Drs. Ramakrishna and Levinson are entitled to greater weight than the opinions of Drs. Majernick and Aquilina because the former have superior qualifications. *Id.*

We affirm the administrative law judge's credibility determinations based upon the physicians' superior credentials as they are board-certified in internal medicine and pulmonary disease.<sup>4</sup> Decision and Order on Third Remand at 6 - 7. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Inasmuch as the administrative law judge acted within his discretion in according greater weight to Drs. Levinson and Ramakrishna, we decline to address claimant's contention that the administrative law judge erred in according diminished weight to Dr. Aquilina's opinion on the basis of the physician's reliance upon an x-ray and medical opinion not contained in the record. Thus, we affirm the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(4) (2000). As the administrative law judge permissibly determined that all of the relevant evidence at Section 718.202(a)(2000), when considered together, failed to establish the presence of pneumoconiosis, we affirm the denial of benefits. *See Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986).

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<sup>4</sup>The record indicates that Dr. Aquilina is board-certified in anesthesiology. Claimant's Exhibit 2. Dr. Majernick is board-certified in emergency medicine. Claimant's Exhibit 1.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits (Upon Third Remand by the Benefits Review Board) is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge