BRB No. 01-0800 BLA

DALLAS D. CHAFINS[1]	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CHRISCO SERVICE, INCORPORATED	)	DATE ISSUED:
	)	
and	)	
	)	
FRONTIER 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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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[1]Claimant is identified as both Chafins and Chaffins throughout the record. The administrative law judge's Decision and Order identifies claimant as Chaffins. Claimant is similarly identified as Chaffins in claimant's most recent brief. However, upon review, the more reliable evidence indicates that claimant's correct last name is Chafins.

In the adjudication of claimant's earlier 1980 claim, Administrative Law Judge T. Eugene Burts, the Board, and the United States Court of Appeals for the Fourth Circuit each identified claimant as Chafins. *See* Director's Exhibit 25. Claimant is also identified as Chafins on his 1980 and 1999 claim forms, Director's Exhibits 1, 25, a Wage and Tax Statement, Director's Exhibit 6, a Social Security Itemized Statement of Earnings, Director's Exhibit 7, and a Marriage Certificate. Director's Exhibit 10. Moreover, the most recent documents containing claimant's signature indicate that claimant's correct last name is Chafins. *See* Director's Exhibits 1, 9.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order (00-BLA-0611) of Administrative Law Judge Joseph E. Kane 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).[2] The instant case involves a duplicate claim filed on June 8, 1999.[3] After

[2]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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). 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 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). On July 19, 2001, the Board ordered the parties to submit briefs regarding the impact of the amended regulations. 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*, 160 F.Supp.2d 47 (D.D.C. 2001). By Order dated August 15, 2001, the Board rescinded its Order requiring the parties to submit briefs addressing the impact of the amended regulations.

[3]The relevant procedural history of the instant case is as follows: Claimant initially filed a claim for benefits on January 8, 1980. Director's Exhibit 25. In a Decision and Order dated September 29, 1988, Administrative Law Judge T. Eugene Burts, after crediting claimant with at least twenty-one years of coal mine employment, found that the x-ray evidence was sufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1). *Id.* Judge Burts, however, found that the evidence was sufficient to establish rebuttal pursuant to 20 C.F.R. §727.203(b)(3). *Id.* Judge Burts further found that claimant was not entitled to benefits under 20 C.F.R. Part 410 and 20 C.F.R. §410.490. *Id.*

crediting claimant with forty-seven years of coal mine employment, the administrative law judge found the evidence insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).[4] Accordingly, the administrative law judge denied benefits. On appeal, claimant argues that the instant case falls within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's last coal mine employment was in Kentucky. Claimant

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Accordingly, Judge Burts denied benefits. *Id.* By Decision and Order dated February 18, 1993, the Board affirmed Judge Burts' finding that the evidence was sufficient to establish rebuttal pursuant to 20 C.F.R. §727.203(b)(3). *Chafins v. H & C Coal Co.*, BRB No. 89-2722 BLA (Feb. 18, 1993) (unpublished). The Board, therefore, affirmed Judge Burts' denial of benefits. *Id.*

Claimant filed a second claim on June 14, 1993. Director's Exhibit 25. Since claimant's 1993 claim was filed within one year of the issuance of the last denial of his 1980 claim, the 1993 claim constituted a timely request for modification of the 1980 claim. *See Stanley v. Betty B Coal Co.*, 13 BLR 1-72 (1990). The district director denied claimant's request for modification on March 21, 1994, September 20, 1994 and January 13, 1995. *Id.* There is no indication that claimant took any further action in regard to his 1980 claim.

Claimant filed a third claim on June 8, 1999. Director's Exhibit 1.

[4]Although Section 725.309 has been revised, these revisions only apply to claims filed after January 19, 2001.

also contends that the administrative law judge erred in finding the evidence insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Neither employer nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

We first address the issue of the applicable law. In the instant case, the administrative law judge noted that although claimant last worked as a miner in Kentucky, a state falling within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, he also worked in Virginia, a state falling within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. Decision and Order at 8. Because claimant elected review of his previous claim in the Fourth Circuit, the administrative law judge applied the law of that circuit to the instant claim. *Id.*

The Board has held that, in order to establish consistency in determining the applicable law in cases before the Board, it will apply the law of the United States Court of Appeals for the circuit in which the miner most recently performed coal mine employment. Inasmuch as claimant's most recent coal mine employment took place in Kentucky, we will apply the law of the United States Court of Appeals for the Sixth Circuit in the instant case. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Section 725.309 (2000) provides that a duplicate claim is subject to automatic denial on the basis of the prior denial, unless there is a determination of a material change in conditions since the denial of the prior claim. 20 C.F.R. §725.309(d) (2000). The United States Court of Appeals for the Sixth Circuit has held that in assessing whether a material change in conditions has been established, an administrative law judge must consider all of the new evidence, favorable and unfavorable, and determine whether the miner has proven at least one of the elements of entitlement previously adjudicated against him. *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994).

In the adjudication of claimant's 1980 claim, Administrative Law Judge T. Eugene Burts found that the x-ray evidence was sufficient to establish the existence of pneumoconiosis, thereby establishing invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1). Director's Exhibit 25. Having established invocation of the interim presumption, claimant was provided with a presumption that he was totally disabled due to pneumoconiosis. *Id.* Judge Burts, therefore, did not affirmatively find that the evidence of record was sufficient to establish the existence of a totally disabling respiratory or pulmonary

impairment. Consequently, in order to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000), the newly submitted evidence must support a finding of total disability. *See* 20 C.F.R. §718.204(b).[5]

[5]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

In his consideration of whether the newly submitted evidence was sufficient to establish total disability, the administrative law judge properly noted that all of the newly submitted pulmonary function and arterial blood gas studies are non-qualifying.[6] Decision and Order at 9; Director's Exhibits 11, 24; Claimant's Exhibit 1; Employer's Exhibit 1. The administrative law judge also properly noted that the record does not contain any evidence of cor pulmonale with right sided congestive heart failure. Decision and Order at 9. Consequently, we affirm the administrative law judge's findings that the newly submitted evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(3) (2000). *See* 20 C.F.R. §718.204(b)(2)(i)-(iii).

[6]A "qualifying" pulmonary function study or arterial blood gas study yields values which are equal to or less than the applicable table values, *i.e.* Appendices B and C of Part 718. A "non-qualifying" study yields values which exceed the requisite table values.

Claimant contends that the administrative law judge erred in finding the newly submitted medical opinion evidence insufficient to establish total disability. Claimant specifically contends that the administrative law judge erred in not according greater weight to Dr. Sundaram's opinion based upon his status as claimant's treating physician. The Sixth Circuit has held that the opinions of treating physicians are entitled to greater weight than those of non-treating physicians. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993). However, in the instant case, the administrative law judge properly discredited Dr. Sundaram's opinion because he failed to reconcile his finding of total disability with the non-qualifying objective evidence.[7] Decision and Order at 9; Director's Exhibit 24; Claimant's Exhibit 1. The administrative law judge, therefore, found that Dr. Sundaram's opinions regarding the extent of claimant's disability were "conclusory and unreasoned." *Id.* An administrative law judge may properly find that a physician's opinion is not well reasoned where he does not adequately explain how he arrived at his conclusion that the miner suffered from a totally disabling respiratory or pulmonary impairment. *See Clark v. Karst Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge also found that Dr. Sundaram's finding of total disability was called into question by the contrary opinions of Drs. Younes and Jarboe.[8] Decision and Order at 9; Director's Exhibit 11;

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[7]Dr. Sundaram examined claimant on October 4, 1999. Dr. Sundaram also relied upon the results of a non-qualifying pulmonary function study conducted on October 4, 1999. A notation on claimant's October 4, 1999 pulmonary function study indicates that it was "normal." Director's Exhibit 24. In a medical report dated October 4, 1999, Dr. Sundaram indicated that claimant was not physically able, from a pulmonary standpoint, to do his usual coal mine employment due to shortness of breath with limited activity. Director's Exhibit 24.

Dr. Sundaram reexamined claimant on February 29, 2000. In a report dated February 29, 2000, Dr. Sundaram again indicated that claimant was not physically able, from a pulmonary standpoint, to do his usual coal mine employment due to shortness of breath with limited activity. Claimant's Exhibit 1. In support of this finding, Dr. Sundaram merely directed reference to claimant's work history, physical exam, chest x-ray and pulmonary function study. *Id.* Dr. Sundaram again referenced claimant's non-qualifying October 4, 1999 pulmonary function study. *Id.* Dr. Sundaram, however, did not interpret claimant's October 4, 1999 pulmonary function study as revealing any degree of pulmonary impairment.

[8]Dr. Younes examined claimant on June 16, 1999. In a report dated June 18, 1999, Dr. Younes opined that claimant suffered from a mild pulmonary impairment. Director's Exhibit 11. Dr. Younes further indicated that claimant retained the respiratory capacity to perform the work of a coal miner. *Id.*

Employer's Exhibit 1. Because the administrative law judge properly discredited Dr. Sundaram's opinion, he was not required to accord greater weight to his opinion based upon his status as claimant's treating physician. *See generally Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995). We find no error in the administrative law judge's consideration of Dr. Sundaram's opinion. We, therefore, affirm the administrative law judge's finding that the newly submitted medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4) (2000). *See* 20 C.F.R. §718.204(b)(2)(iv).

In light of our affirmance of the administrative law judge's findings that the newly submitted evidence is insufficient to establish total disability, we affirm the administrative law judge's finding that the evidence is insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). *Ross, supra*.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

Dr. Broudy examined claimant on June 13, 2000. In a report dated June 15, 2000, Dr. Broudy opined that claimant had "no pulmonary functional impairment whatsoever." Employer's Exhibit 1.