BRB No. 02-0183 BLA

ANGELO H. ROBERTS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PEERLESS EAGLE COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
A.T. MASSEY	)	
	)	
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 Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Ray E. Ratliff, Jr., Charleston, West Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (01-BLA-0112) of Administrative Law Judge Gerald M. Tierney denying benefits on a duplicate[1] claim filed pursuant to the

[1] Claimant's initial claim, filed on May 16, 1973, was denied on September 22, 1980.

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 administrative law judge found that the record documented at least thirty-four years of coal mine employment and that employer conceded that claimant worked twenty years as a coal miner. The administrative law judge determined that claimant's previous claims were denied on the ground that the evidence was insufficient to establish total disability due to pneumoconiosis, and found that the newly submitted evidence was also insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Consequently, the administrative law judge concluded that claimant failed to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).[3] Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the evidence is sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §725.202(a)(1), (4), and that the administrative law judge erred in failing to address this issue. Claimant also challenges the administrative law judge's finding that the newly submitted evidence is insufficient to establish a material change in conditions at Section 725.309 (2000), as claimant asserts that the weight of the evidence establishes total disability due to pneumoconiosis pursuant to Section 718.204(b), (c). Employer responds to claimant's appeal, urging affirmance of the administrative law judge's

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Director's Exhibit 55. Claimant's second claim, filed on September 29, 1981, was denied on February 9, 1983. Directors' Exhibit 56. The instant claim was filed on October 14, 1999. Director's Exhibit 1.

[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 20 C.F.R. Parts 718, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3]The revisions to the regulation at 20 C.F.R. §725.309 do not apply to claims, such as this, which were pending on January 19, 2001. 20 C.F.R. §725.2.

Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to respond to the issues raised in claimant's brief.

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'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 Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. 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. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, adopted a standard whereby an administrative law judge must consider all of the new evidence, favorable and unfavorable to claimant, and determine whether the miner has proven at least one of the elements of entitlement previously adjudicated against him, and thereby has established a material change in conditions at 20 C.F.R. §725.309(d) (2000). *See Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). Contrary to claimant's arguments, inasmuch as the issue of the existence of pneumoconiosis was previously adjudicated in claimant's favor, Director's Exhibits 55, 56, the issue was not relevant to the administrative law judge's determination of whether a material change in conditions was established at Section 725.309 (2000). Rather, the administrative law judge properly determined that claimant's duplicate claim must be denied on the basis of the prior denial unless the weight of the newly submitted evidence is sufficient to establish total disability due to pneumoconiosis. Decision and Order at 2; *Rutter, supra*.

Claimant contends that the administrative law judge erred in finding that claimant failed to meet his burden of proving a material change in conditions at Section 725.309 (2000), as claimant asserts that the most probative new evidence establishes that claimant is totally disabled due to pneumoconiosis. Specifically, claimant argues that Dr. Ranavaya's opinion is entitled to determinative weight because it is well reasoned and supported by the two most recent blood gas studies of record, both of which produced qualifying values. Claimant maintains that the administrative law judge should have acknowledged that claimant's usual coal mine employment involved regular, heavy manual labor, and contends that the administrative law judge erred in crediting the opinions of Drs. Bellotte and Castle, that claimant retains the respiratory capacity to perform his usual coal mine employment, when these physicians were unaware of the exertional requirements of claimant's work and,

contrary to the progressive nature of pneumoconiosis, they improperly relied on earlier nonqualifying studies to support their conclusions. Claimant's arguments are without merit.

In evaluating the conflicting new evidence on the issue of total respiratory disability, the administrative law judge initially acknowledged that the two most recent blood gas studies of record, which were obtained at rest, produced values sufficient to establish total respiratory disability at Section 718.204(b)(2)(ii). Decision and Order at 4. This evidence was not dispositive of the issue, however, as the administrative law judge was then required to weigh it against the contrary probative new evidence.[4] 20 C.F.R. §718(b)(2); *Rutter, supra; Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986). After finding that the remaining new blood gas studies and pulmonary function studies produced nonqualifying values and that the record contained no evidence of cor pulmonale with right-sided congestive heart failure, the administrative law judge accurately reviewed the new medical opinions under Section 718.204(b)(2)(iv), and determined that three physicians considered the results of both of the qualifying blood gas studies in formulating their opinions regarding claimant's respiratory capacity: (1) Dr. Ranavaya, an occupational medicine specialist, who administered the blood gas study of February 12, 2001; (2) Dr. Bellotte, a pulmonary specialist, who administered the blood gas study of June 20, 2000; and (3) Dr. Castle, a pulmonary specialist, who performed a consultative review of the record. The administrative law judge further determined that, while Dr. Ranavaya opined that claimant suffered a totally disabling respiratory impairment, Claimant's Exhibit 1, Dr. Bellotte testified that the best test for measuring claimant's exercise capacity was an arterial blood gas study on exercise. Decision and Order at 5-6; Employer's Exhibit 8 at 28. After performing calculations based upon the treadmill exercise test results obtained seven months earlier by Dr. Rasmussen, Dr. Bellotte agreed with Dr. Rasmussen's conclusion that claimant was capable of performing his last coal mine duties, as claimant's improved PO2 with exertion demonstrated that claimant had no significant loss of pulmonary function. Dr. Bellotte further noted that claimant's blood gas values at rest fluctuated, as the values obtained by Dr. Ranavaya in February 2001 were slightly improved over those obtained by Dr. Bellotte in June 2000. Decision and Order at 6; Director's Exhibits 10, 33, 37;

[4]We affirm, as unchallenged on appeal, the administrative law judge's finding that the remaining newly submitted objective evidence of record and the medical opinions of Drs. Ray, Spagnolo and Jarboe were insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer's Exhibits 7-8. Similarly, Dr. Castle opined that the objective testing as a whole showed no significant loss of lung function, noting some variation in claimant's blood gas values at rest and claimant's normal response to exercise on strenuous testing. Decision and Order at 6; Employer's Exhibits 5, 9.

Based on claimant's testimony at the hearing, the administrative law judge found that claimant's usual coal mine employment, as a belt and supply man, involved loading and hauling supplies such as headers that weighed close to 100 pounds and solid blocks that weighed 50 pounds; putting in, taking out, and shoveling belts; crawling; and occasionally cleaning up and rock dusting at the face. Decision and Order at 4; Hearing Transcript.at 11-15. The administrative law judge accurately determined that Drs. Bellotte and Castle were aware that claimant last worked as a belt and supply man; that Dr. Castle testified that this job involved some heavy manual labor; and that both physicians reviewed Dr. Rasmussen's report, which discussed claimant's specific job duties involving "considerable heavy manual labor" Director's Exhibit 10, and agreed with Dr. Rasmussen's conclusion that claimant retained the pulmonary capacity to perform his job. Decision and Order at 6; Director's Exhibits 33, 37; Employer's Exhibits 5, 7-9; *see Eagle v. Armco Inc.*, 943 F.2d 509, 15 BLR 2-201 (4th Cir. 1991); *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991).

Weighing all of the new evidence together, like and unlike, the administrative law judge reasonably found that the medical opinion evidence was the most probative, as the physicians considered a totality of factors rather than isolated numeric criteria. Decision and Order at 7; *Fields, supra*. While the administrative law judge recognized that Dr. Ranavaya was highly qualified, performed the most recent examination and testing of claimant, and reviewed earlier evidence including the test results of Drs. Rasmussen and Bellotte, the administrative law judge acted within his discretion as trier-of-fact in according greater weight to the contrary opinions of Drs. Bellotte and Castle, as Dr. Ranavaya did not address the variability in claimant's resting blood gas values or discuss the significance of Dr. Rasmussen's exercise studies, whereas Drs. Bellotte and Castle were pulmonary experts who evaluated claimant's condition in a broader context and explained what factors led them to conclude that claimant was not disabled notwithstanding his qualifying blood gas values obtained at rest.[5] Decision and Order at 7; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d

[5]Claimant also argues that the administrative law judge erred in failing to address the fact that Drs. Castle and Bellotte relied on nonqualifying pulmonary function studies to buttress their opinions, when the regulations specify that pulmonary function studies and blood gas studies are alternative methods of establishing total disability and the tests measure different types of impairment. Further, claimant asserts that the results of Dr. Bellotte's blood gas study, which was technically validated by Dr. Gaziano, corroborate those obtained by Dr. Ranavaya, and that Dr. Bellotte's notation of variability in the resting values ignores the fundamental point that both studies produced qualifying values. Claimant's arguments are

438, 21 BLR 2-269 (4th Cir. 1997); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). 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. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). The administrative law judge's finding that the weight of the newly submitted evidence was insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2) is supported by substantial evidence, and thus is affirmed. Consequently, we affirm the administrative law judge's finding that claimant failed to establish a material change in conditions pursuant to Section 725.309 (2000), and we need not reach claimant's arguments regarding the issue of disability causation at Section 718.204(c).

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

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without merit. Drs. Bellotte and Castle did not rely exclusively on the nonqualifying pulmonary function study results to find no disabling respiratory impairment; rather, both physicians considered the totality of the evidence and acknowledged that claimant's resting blood gas values were qualifying, but explained that claimant's blood gas results on exercise were more probative and showed that claimant's respiratory impairment was mild and not disabling. Director's Exhibits 33, 37; Employer's Exhibits 5, 7-9.

PETER A. GABAUER, Jr.
Administrative Appeals Judge