BRB Nos. 99-1247 BLA
and 03-0463 BLA

FRED L. RUNYON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DOTCO ENERGY COMPANY	)	
	)	
and	)	
	)	
A.T. MASSEY	)	DATE ISSUED: 08/24/2004
	)	
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 – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, and the Decision and Order – Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and W. Andrew Delph (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

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

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

PER CURIAM:

Claimant[1] appeals the Decision and Order – Denial of Benefits (01-BLA-0644) of Administrative Law Judge Thomas F. Phalen, Jr. and the Decision and Order – Denial of Benefits (99-BLA-0048) of Administrative Law Judge Robert L. Hillyard on a miner's 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] This case involves claimant's appeal of the Decision and Order of Judge Phalen denying benefits on modification (BRB No. 03-0463 BLA), as well as the reinstatement of claimant's appeal of Judge Hillyard's decision in this claim (BRB No. 99-1247 BLA).

Judge Phalen found that claimant was engaged in employment in or around the coal mines "for a period of not less than 23.94 years." 2003 Decision and Order at 8. Applying the regulations pursuant to 20 C.F.R. Part 718, Judge Phalen found the new evidence insufficient to establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *Id.* at 20-23. Additionally, Judge Phalen found the newly submitted evidence insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b). *Id.* at 23-25. Therefore, Judge Phalen found that claimant failed to establish a change in

[1]Claimant is Fred L. Runyon, the miner, who filed his claim for benefits on March 2, 1994. Director's Exhibit 1. Administrative Law Judge Michael P. Lesniak awarded benefits on October 9, 1996, and employer appealed. Director's Exhibits 44, 45. After considering employer's appeal, the Board reversed the award of benefits because the medical evidence was insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c) (2000). Director's Exhibit 49. Claimant filed a motion for reconsideration, which the Board denied on November 5, 1997. Director's Exhibits 50, 51. Subsequently, claimant requested modification on November 12, 1997. Director's Exhibit 52. The district director denied claimant's request for modification and claimant requested a hearing before the Office of Administrative Law Judges. Director's Exhibits 60, 61. On August 19, 1999, Administrative Law Judge Robert L. Hillyard denied modification, and claimant appealed to the Board. Director's Exhibits 79, 80. Thereafter, claimant filed a Motion for Remand and requested modification on December 8, 1999. Director's Exhibits 80, 85. By Order dated December 17, 1999, the Board granted claimant's motion and remanded the case to the district director for consideration of claimant's request of modification. Director's Exhibit 85. The Board informed claimant that his appeal of Judge Hillyard's Decision and Order would be reinstated only if claimant requested reinstatement. *Id.*

[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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

conditions or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000).[3] *Id.* at 23, 25-26. Accordingly, benefits were denied on modification.

In his Notice of Appeal, claimant requested that the Board reinstate his previous appeal of Judge Hillyard's 1999 Decision and Order. By Order dated April 16, 2003, the Board granted claimant's request for reinstatement of the prior appeal.[4] *Runyon v. Dotco Energy Co.*, BRB Nos. 99-1247 BLA, 03-0463 BLA (Apr. 16, 2003)(Order)(unpub.). In his appeal addressing Judge Phalen's Decision and Order, claimant contends that Judge Phalen erred in his consideration of the new x-ray evidence pursuant to Section 718.304. Claimant's Brief at 5-9. Employer responds, urging affirmance of Judge Phalen's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.[5]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

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[3]Although the Department of Labor has made substantive revisions to 20 C.F.R. §725.310 in the new regulations, these revisions only apply to claims filed after January 19, 2001.

[4]By Order dated August 20, 2003, the Board dismissed claimant's appeals as abandoned because claimant failed to respond to the Board's July 8, 2003 Order to show cause. *Runyon v. Dotco Energy Co.*, BRB Nos. 99-1247 BLA, 03-0463 BLA (Aug. 20, 2002)(Order)(unpub.). In response, claimant submitted a Motion for Reconsideration along with his Brief in Support of Award of Benefits. In his motion, claimant asserted that he responded to the Show Cause Order by submitting his brief on July 24, 2003, which was received by employer. Subsequently, the Board issued an Order granting claimant's motion and reinstating claimant's appeals. *Runyon v. Dotco Energy Co.*, BRB Nos. 99-1247 BLA and 03-0463 BLA (Sept. 11, 2003)(Order)(unpub.).

[5]We affirm Administrative Law Judge Thomas F. Phalen, Jr.'s finding of "23.94" years of coal mine employment and his finding that, based on the new evidence, total respiratory disability was not established pursuant to 20 C.F.R. §718.204(b) because 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).

We initially address claimant's reinstated appeal of Judge Hillyard's August 19, 1999 Decision and Order. Claimant, without the assistance of counsel,[6] generally contended that Judge Hillyard erred in denying benefits on modification.[7] Employer responded, urging affirmance of Judge Hillyard's denial of benefits. The Director declined to participate in claimant's earlier appeal.

In his 1999 Decision and Order, Judge Hillyard initially noted that employer was "collaterally estopped" from contesting Administrative Law Judge Michael P. Lesniak's finding of the existence of pneumoconiosis arising out of coal mine employment. Director's Exhibit 79 at 3 n.1. Judge Hillyard found the newly submitted evidence insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c) (2000).[8] *Id.* at 9-11. Judge Hillyard also found the new evidence insufficient to establish complicated pneumoconiosis pursuant to Section 718.304 (2000). *Id.* at 11. Therefore, Judge Hillyard found that claimant failed to establish a change in conditions or a mistake in a determination of fact pursuant to Section 725.310 (2000) and denied modification. *Id.*

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[6]Claimant was unrepresented by counsel before Judge Hillyard. Judge Hillyard identified the issues in this case and gave claimant the opportunity to object to and admit evidence and to testify at the hearing. April 15, 1999 Hearing Transcript at 6-8, 10-19. Therefore, we hold that claimant voiced a knowing and voluntary waiver of his right to be represented by counsel pursuant to 20 C.F.R. §725.362(b) and the hearing was conducted in accordance with *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984).

[7]Employer asserts in its 2003 Response Brief that claimant has waived his right to appeal the 1999 Decision and Order because claimant in his 2003 Brief in Support of Award of Benefits failed to present any arguments in support of his reinstated appeal. Employer's Brief at 29. Claimant's counsel in the 2003 appeal did not represent claimant when claimant appealed Judge Hillyard's decision in 1999. Director's Exhibit 80. Claimant was unrepresented by counsel in his 1999 appeal to the Board. Director's Exhibits 80, 81. Therefore, we consider claimant's reinstated appeal under the *pro se* standard of review, which is whether Judge Hillyard's Decision and Order is rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by the Act, 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates*, *Inc*., 380 U.S. 359 (1965); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989).

[8]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c) (2000), is now found at 20 C.F.R. §718.204(b) in the new regulations, while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b) (2000), is now found at 20 C.F.R. §718.204(c) in the new regulations.

Regarding total respiratory disability, Judge Hillyard noted that the record contains no newly submitted pulmonary function studies and, therefore, properly found that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(c)(1) (2000). *Id.* at 9; *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986). Similarly, Judge Hillyard stated that the record contains no new blood gas study evidence and found that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(c)(2) (2000). Director's Exhibit 79 at 9. In doing so, Judge Hillyard erred in failing to consider the new blood gas study dated September 12, 1998. Director's Exhibit 65. However, because this blood gas study yielded non-qualifying[9] values, *Tucker v. Director, OWCP*, 10 BLR 1-35 (1987), we deem harmless, *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), any error Judge Hillyard may have made in failing to consider the September 12, 1998 test. Additionally, Judge Hillyard properly found that claimant failed to demonstrate total respiratory disability pursuant to Section 718.204(c)(3) (2000) inasmuch as the record does not contain any evidence of cor pulmonale with right-sided congestive heart failure. Director's Exhibit 79 at 9. Therefore, we affirm Judge Hillyard’s finding that claimant failed to demonstrate total respiratory disability and a change in conditions pursuant to Section 718.204(c)(1)-(c)(3) (2000). *See* 20 C.F.R. §718.204(b)(2)(i)-(b)(2)(iii).

Regarding the newly submitted medical opinions, Judge Hillyard noted that Drs. Vuskovich, Jarboe, Dahhan, and Fino found that claimant has no respiratory impairment and concluded that claimant retains the respiratory capacity to perform his usual coal mine employment. Director's Exhibit 79 at 4-7. Judge Hillyard also noted that Dr. Alhomsi stated that claimant should no longer work anywhere that might worsen his lung condition such as coal mine employment or any other dusty work environment and that Dr. Wells concluded that claimant is totally disabled due to his black lung disease.[10] *Id.* at 4, 6.

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[9]A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values, *i.e.*, Appendix B to 20 C.F.R. Part 718. A "non-qualifying" study yields values that exceed those values.

[10]Additionally, Judge Hillyard stated that Dr. Musgrave opined that claimant is not able, from a pulmonary standpoint, to perform his usual coal mine employment. Director's Exhibit 79 at 6-7. Judge Hillyard noted that Dr. Musgrave’s September 17, 1993 opinion was in existence at the time of the original hearing in this case on April 24, 1996 and, therefore, cannot show a change in conditions. *Id.* at 10 n.2. However, Judge Hillyard went on to find that Dr. Musgrave’s report is “less persuasive” because this physician “did not administer or rely upon the results of either a pulmonary function study or blood gas study in reaching his conclusion.” *Id.* at 10.

In reviewing the new medical opinion evidence, Judge Hillyard properly found that Dr. Alhomsi's opinion, recommending that claimant avoid further dust exposure, is insufficient to demonstrate total respiratory disability because this physician "fails to address the Miner's physical capability to return to work." *Id.* at 10; *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Moreover, Judge Hillyard permissibly "discounted" Dr. Wells' report because he found it was "not based on any objective medical evidence," and because this physician was not familiar with claimant's coal mine employment history and "his short letter does not constitute a reasoned medical report." Director's Exhibit 79 at 10; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Conversely, Judge Hillyard properly found the opinions of Drs. Jarboe, Dahhan, and Fino to be "well-documented and reasoned." Director's Exhibit 79 at 10; *Clark*, 12 BLR at 1-155; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fields*, 10 BLR at 1-21-22. Judge Hillyard further stated that he deferred to the greater expertise[11] of Drs. Jarboe, Dahhan, and Fino and noted that "[e]ach of these physicians was well aware of the exertional requirements of [claimant's] job."[12] Director's Exhibit 79 at 10; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). Accordingly, we affirm Judge Hillyard's finding that claimant failed to demonstrate total respiratory disability and a change in conditions by the newly submitted medical opinion evidence. *See* 20 C.F.R. §718.204(b)(2)(iv).

Additionally, Judge Hillyard found, "based on a review of the old and new evidence, that there was no mistake in determination of fact in the prior denial."[13]

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[11]The record reveals that Drs. Jarboe, Dahhan, and Fino are Board-certified in Internal Medicine and Pulmonary Disease, and are B readers. Director's Exhibit 68.

[12]In accordance with *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000), the record reflects that Drs. Jarboe, Dahhan, and Fino had knowledge of claimant's usual coal mine employment as a foreman and equipment operator. Director's Exhibits 38, 65, 71.

[13]In determining whether claimant established a mistake in fact, Judge Hillyard considered, pursuant to Section 718.304, Dr. Musgrave's September 17, 1993 interpretation of an x-ray of that same date showing Category A large opacities. Judge Hillyard found Dr. Musgrave's x-ray interpretation to be insufficient to establish complicated pneumoconiosis because it was reread by Dr. Sargent, a B reader and Board-certified radiologist, as showing no large opacities and Drs. Jarboe and Dahhan, both B readers, concurred in Dr. Sargent's finding. Director's Exhibit 79 at 11; *Johnson v.*

Director's Exhibit 79 at 11. We affirm Judge Hillyard's determination that claimant did not establish a mistake in a determination of fact pursuant to Section 725.310 (2000) as this finding is supported by substantial evidence. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 18 BLR 2-290 (6th Cir. 1994). Based on Judge Hillyard's findings, we affirm his 1999 denial of claimant's request for modification pursuant to Section 725.310 (2000) inasmuch as he rationally determined that claimant failed to establish a change in conditions or a mistake in a determination of fact. *See* discussion, *supra*; *Worrell,* 27 F.3d at 231, 18 BLR at 2-298-99; *see also Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993).

Regarding Judge Phalen's (hereinafter, the administrative law judge) Decision and Order denying benefits issued on March 6, 2003, claimant contends that the administrative law judge erred in his consideration of the x-ray evidence at Section 718.304. Claimant's Brief at 5-9. In reviewing the new x-ray evidence, the administrative law judge considered the interpretations of each of the seven x-rays separately to determine whether the x-ray establishes the presence of simple or complicated pneumoconiosis. 2003 Decision and Order at 20-22.

In considering the October 22, 1999 x-ray, the administrative law judge noted that Drs. DePonte, Aycoth, Cappiello, and Barrett, who are B readers[14] and Board-certified radiologists, interpreted this x-ray as showing a Category A large opacity. *Id.* at 20. The administrative law judge further noted that Drs. Scott, Wheeler, Wiot, and Spitz, who are also dually-qualified, found the existence of simple pneumoconiosis on this x-ray, but did not find the presence of large opacities. *Id.* The administrative law judge stated that while Dr. Sargent determined that the October 22, 1999 x-ray was unreadable, the other nine physicians deemed the film quality to be acceptable. *Id.* Therefore, the administrative law judge reasonably found "that this film is of sufficient quality to constitute evidence of the fact for which it was proffered." *Id.*; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). Because four dually-qualified physicians identified the existence of complicated

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Island Creek Coal Co., 846 F.2d 364, 11 BLR 2-161 (6th Cir. 1988); *Creech v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988).

[14] A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination given on behalf of or by the Appalachian Laboratory for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

pneumoconiosis and four dually-qualified physicians and one B reader did not, the administrative law judge found the evidence regarding the existence of complicated pneumoconiosis on the October 22, 1999 x-ray to be in "equipoise." 2003 Decision and Order at 21. Accordingly, the administrative law judge rationally concluded that claimant failed to establish complicated pneumoconiosis based on the October 22, 1999 x-ray.[15] *Id.*; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

The administrative law judge found the March 21, 2000 x-ray to be negative for complicated pneumoconiosis because none of the four physicians who read the x-ray noted large opacities. 2003 Decision and Order at 21; *Ondecko*, 512 U.S. at 280, 18 BLR at 2A-12; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). Because all three readers who interpreted the April 10, 2000 x-ray found a Category A large opacity, the administrative law judge found complicated pneumoconiosis established on this x-ray. *Id.* The administrative law judge accorded greater weight to the physician with superior qualifications and found the July 13, 2001 x-ray to be positive for complicated pneumoconiosis.[16] 2003 Decision and Order at 21; *Johnson v. Island Creek Coal Co.*, 846 F.2d 364, 11 BLR 2-161 (6th Cir. 1988); *Creech v. Benefits Review Board*, 841 F.2d 706, 11 BLR 2-86 (6th Cir. 1988); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge determined that the October 15, 2001, October 28, 2001, and February 27, 2002 x-rays were negative for the existence of complicated pneumoconiosis because all of the physicians who interpreted these x-rays found simple pneumoconiosis present and no large opacities.[17] 2003 Decision and Order at 21-22;

[15]Claimant contends that "[n]one of the readers who read the October 2001 x-ray was dually qualified." Claimant's Brief at 6. However, contrary to claimant's contention, Dr. Scott, a B reader and Board-certified radiologist, interpreted the October 15, 2001 reading as showing simple pneumoconiosis and no large opacities. Employer's Exhibit 17.

[16]Dr. DePonte, who is a B reader and Board-certified radiologist, found the presence of a Category B large opacity whereas Drs. Castle and Hippensteel, who are B readers, found the existence of simple pneumoconiosis on this x-ray, but did not find the presence of large opacities. Claimant's Exhibit 1; Employer's Exhibit 13.

[17]There is no support in the record for claimant's assertion that the x-ray interpretations of Drs. Scott and Wheeler "are so far removed from the general consensus of the other readers in the record [that] their credibility must be questioned." Claimant's Brief at 5.

Ondecko, 512 U.S. at 280, 18 BLR at 2A-12; *Edmiston*, 14 BLR at 1-68; *Sheckler*, 7 BLR at 1-131.

The administrative law judge thus found that two of the seven newly submitted x-rays show the presence of large opacities and concluded that "[t]he radiographic evidence weighs against a determination of complicated pneumoconiosis." 2003 Decision and Order at 22. We affirm the administrative law judge's finding that claimant failed to establish that he has complicated pneumoconiosis and thereby failed to establish a change in conditions pursuant to Section 718.304(a) inasmuch as the administrative law judge permissibly weighed the x-ray evidence and his finding is supported by substantial evidence. *See* discussion, *supra*; *Ondecko*, 512 U.S. at 280, 18 BLR at 2A-12; *Johnson*, 846 F.2d at 366, 11 BLR at 2-163; *Creech*, 841 F.2d at 709, 11 BLR at 2-90; *Kuchwara*, 7 BLR at 1-170.

The administrative law judge next considered the new CT scan evidence together with the x-ray evidence pursuant to Section 718.304. The administrative law judge concluded that "[i]n the face of the contrary x-ray evidence provided by Employer, which is supported by the more sensitive CT scan evidence" claimant has failed to show, by a preponderance of the evidence, that he has complicated pneumoconiosis.[18] 2003 Decision and Order at 23. Because the administrative law judge properly considered the x-ray and CT scan[19] evidence pursuant to Section 718.304, we affirm his finding that claimant failed to establish that he has complicated pneumoconiosis or to establish a change in conditions at this section. *Ondecko*, 512 U.S. at 280, 18 BLR at 2A-12; *Kuchwara*, 7 BLR at 1-170.

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[18]In considering all the relevant new evidence pursuant to 20 C.F.R. §718.304, the administrative law judge erred in stating that "Section 718.304 does not allow for [the] irrebuttable presumption of total disability to be established by narrative opinion evidence." 2003 Decision and Order at 23; 20 C.F.R. §718.304(c); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*); *see Braenovich v. Cannelton Industries, Inc./Cypress Amax*, 22 BLR 1-236 (2003). However, because none of the new medical opinions in the record are supportive of a finding of complicated pneumoconiosis, we deem harmless, *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), any error the administrative law judge may have made in failing to consider this evidence pursuant to Section 718.304.

[19]We affirm the administrative law judge's finding that claimant failed to establish that he has complicated pneumoconiosis based on the new CT scan evidence pursuant to Section 718.304(c) as it is unchallenged on appeal. *See Coen*, 7 BLR at 1-33; *Skrack*, 6 BLR at 1-711-12.

Finally, the administrative law judge considered the prior medical evidence and found that claimant failed to demonstrate a mistake in a determination of fact. 2003 Decision and Order at 19, 23, 26. In doing so, the administrative law judge stated that he "reviewed the decision and all of the evidence which was before Administrative Law Judge Hillyard." *Id.* at 23. The administrative law judge concluded that he found no mistake in fact in the prior decision denying modification.[20] Therefore, we affirm the administrative law judge's determination that claimant did not establish a mistake in a determination of fact pursuant to Section 725.310 (2000) as this finding is supported by substantial evidence. *Worrell,* 27 F.3d at 231, 18 BLR at 2-298-99. Based on the administrative law judge's findings, we affirm his 2003 denial of claimant's request for modification pursuant to Section 725.310 (2000) inasmuch as he rationally determined that claimant failed to establish a change in conditions or a mistake in a determination of fact. *See* discussion, *supra*; *Worrell,* 27 F.3d at 231, 18 BLR at 2-298-99; *see also Nataloni*, 17 BLR at 1-84.

[20]The administrative law judge noted that he determined that claimant has "23.94" years of coal mine employment whereas Judge Hillyard credited claimant with sixteen and one-half years. 2003 Decision and Order at 23 n.9. The administrative law judge stated that the additional years of coal mine employment that he found do not "materially affect Claimant's entitlement." *Id.* Therefore, the administrative law judge concluded that his length of coal mine employment finding "does not warrant a review of the entire record to determine the outcome of the claim on its merits." *Id.*

Accordingly, Judge Hillyard's Decision and Order – Denial of Benefits and Judge Phalen's Decision and Order – Denial of Benefits are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge