U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 17-0178 BLA
and 17-0178 BLA-A

CLYDE D. BARTON	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED: 12/26/2017
	)	
Employer-Respondent	)	
Cross-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Modification of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Clyde D. Barton, Vansant, Virginia.

Christopher M. Green (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] and employer cross-appeals, the Decision and Order on Modification (2013-BLA-05589) of Administrative Law Judge Larry S. Merck denying benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on April 10, 2008.[2]

In the initial Decision and Order dated April 18, 2011, Administrative Law Judge Paul C. Johnson, Jr., credited claimant with 13.77 years of coal mine employment.[3] Director's Exhibit 57. Because claimant did not establish at least fifteen years of coal mine employment, Judge Johnson found that claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[4] Considering whether claimant could establish entitlement to benefits without the aid of the Section 411(c)(4) presumption, Judge Johnson found that the new evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, therefore, did not establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). Accordingly, Judge Johnson denied benefits.

Pursuant to claimant's appeal, the Board affirmed Judge Johnson's findings of 13.77 years of coal mine employment, and that the new evidence did not establish the existence of pneumoconiosis. *Barton v. Island Creek Coal Co.*, BRB No. 11-0550 BLA (May 10, 2012) (unpub.). The Board therefore affirmed the denial of benefits. *Id*.

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[1] Cindy Viers, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Viers is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant's initial claim for benefits, filed on August 13, 2001, was denied by the district director on December 22, 2004, for failure to establish the existence of pneumoconiosis. Director's Exhibit 1.

[3] The record reflects that claimant's coal mine employment was in Virginia. Hearing Transcript (Tr.) at 30. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years in underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

Claimant timely requested modification, which the district director denied. Director's Exhibits 64, 67. At claimant's request, the case was forwarded to the Office of Administrative Law Judges for a hearing. Director's Exhibits 69, 71.

In a Decision and Order on Modification dated December 14, 2016, Administrative Law Judge Larry S. Merck (the administrative law judge) considered additional evidence claimant submitted regarding the length of his coal mine employment. The administrative law judge found that the new evidence established an additional 1.11 years of coal mine employment which, when added to the 13.77 years already established, yielded a total of 14.88 years of coal mine employment. Because claimant established less than fifteen years of coal mine employment, the administrative law judge found that claimant could not invoke the Section 411(c)(4) presumption. The administrative law judge further found that the new evidence submitted on modification and the evidence initially submitted in the subsequent claim did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge therefore found that claimant failed to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the denial of benefits. Employer has also filed a cross-appeal, contending that the administrative law judge erred by failing to consider whether modification would render justice under the Act before he addressed claimant's modification request. Employer argues further that the administrative law judge erred in finding additional coal mine employment established, in discounting the opinion of one of its physicians, and in failing to consider all of the evidence indicating that claimant does not have pneumoconiosis. The Director, Office of Workers' Compensation Programs, has not filed a response brief in either appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986). We must affirm the findings of the administrative law judge if they are 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).

Length of Coal Mine Employment

Claimant bears the burden of proof to establish the length of his coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). As the regulations provide only limited guidance for the computation of time spent in coal mine employment, the Board will uphold the

administrative law judge's finding if it is based on a reasonable method of computation and is supported by substantial evidence in the record. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

In the initial Decision and Order, Judge Johnson divided claimant's earnings in coal mine employment by the average yearly earnings in coal mine employment as set forth in Exhibit 610 of the *Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual* (*BLBA Procedure Manual*). Decision and Order at 10. Using that calculation method, Judge Johnson credited claimant with 13.77 years of coal mine employment from 1981 to 1995. *Id*. On modification, the administrative law judge adopted the findings of fact contained in Judge Johnson's Decision and Order, as affirmed by the Board. Decision and Order on Modification at 3.

The administrative law judge then considered the evidence claimant submitted on modification regarding additional alleged coal mine employment. Specifically, the administrative law judge considered two W-2 forms documenting additional employment with Left Fork Coal Company in 1979 and 1981,[5] and found them to be a reliable basis to establish additional coal mine employment.[6] Decision and Order on Modification at 6-9; Claimant's Exhibit 12. Comparing claimant's earnings listed on the W-2 forms for 1979 and 1981 with the average yearly earnings in coal mine employment listed in Exhibit 610 of the BLBA Procedure Manual, the administrative law judge credited claimant with 0.48 of a year of coal mine employment in 1979, and 0.63 of a year of coal mine employment in 1981.[7] *Id*. at 9. Consequently, the administrative law judge found that the W-2 evidence established an additional 1.11 years of coal mine employment. *Id*.

The administrative law judge next considered a signed, notarized statement dated January 27, 2016, from Tolbert Mullins, the owner of S&M Coal Company. Mr. Mullins

[5] Claimant was previously credited with one year of coal mine employment with Left Fork Coal Company in 1980 based upon the Social Security Administration Earnings Record. Decision and Order at 10; Director's Exhibits 7, 8.

[6] The administrative law judge found that the information in the W-2s was consistent with claimant's CM-911A form from his prior claim and with claimant's testimony in the current claim. Decision and Order at 8-9.

[7] Because Judge Johnson previously credited claimant with 0.37 of a year of coal mine employment in 1981 with Island Creek Coal Company, the administrative law judge found that claimant's combined earnings from both Island Creek Coal Company and Left Fork Coal Company established a full year of employment in 1981. Decision and Order at 10; Decision and Order on Modification at 9.

stated that claimant worked for him at S&M Coal Company[8] "from January 1978 thr[ough] June 1979. [Claimant] is unable to find his work record or pay stubs." Claimant's Exhibit 12.

The administrative law judge noted that the record did not indicate that claimant alleged any coal mine employment in 1978 and 1979 with S&M Coal Company before the March 22, 2016 hearing. The administrative law judge found the omission to be significant, noting that he had previously found claimant's 2001 employment history form to be the most accurate account of claimant's early years of coal mine employment. Decision and Order on Modification at 11-12.

Noting that Mr. Mullins' statement was the only evidence "offered to corroborate this newly asserted period of coal mine employment," the administrative law judge found claimant's testimony as to how he and Mr. Mullins determined the length of the alleged employment to be "problematic." Decision and Order on Modification at 12. Specifically, the administrative law judge found that neither claimant nor Mr. Mullins had any records, and it appeared that claimant himself had come up with the dates and supplied them to Mr. Mullins.[9] *Id*. at 12. The administrative law judge found claimant's "varying assertions regarding the period of time when this coal mine [employment] occurred and how he arrived at his conclusion" to be "problematic" as well.[10] *Id*. at 12.

The administrative law judge concluded that "[claimant's] recent general recollections and mutual remembrances with Mr. Mullins" were not sufficiently persuasive to establish the additional alleged coal mine employment with S&M Coal Company in 1978 and 1979. *Id*. at 12. Therefore, adding the 1.11 years of additional coal mine employment established on modification to the 13.77 years already established,

[8] Claimant testified that he worked for S&M Coal Company during two separate periods. Tr. at 16. Judge Johnson previously credited claimant with employment for S&M Coal Company in 1984 and 1985 based upon his Social Security Earnings Record. Decision and Order at 10; Director's Exhibits 7, 8.

[9] Claimant testified that Mr. Mullins had no records of how long claimant worked for him, that claimant himself "came up with the years" based upon his subsequent employment with Left Fork Coal Company in 1979, and that they "just had to come up with that record, but it was probably even before that . . . I went to work for him . . . ." Tr. at 33-34.

[10] Claimant testified that he worked for S&M Coal Company from 1978 to around the middle of 1979. Tr. at 18. He also testified that he worked for S&M Coal Company "for close to two years," for "about a year and a half," and "I know I worked about two years." *Id*. at 16, 18, 33.

the administrative law judge credited claimant with 14.88 years of coal mine employment.

Substantial evidence supports the administrative law judge's finding that claimant had less than fifteen years of coal mine employment. The administrative law judge logically explained how he calculated the length of claimant's coal mine employment in 1979 and 1981 using the earnings listed on claimant's W-2 forms. *See Muncy*, 25 BLR at 1-27.[11] Additionally, the administrative law judge permissibly determined that Mr. Mullins' statement was not sufficiently credible to establish the additional coal mine employment alleged in 1978 and 1979, when the statement was considered in the context of the record and claimant's testimony. *See Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986); Decision and Order on Modification at 10-12. Consequently, we affirm the administrative law judge's determination that claimant did not establish the requisite fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption.

Entitlement Under 20 C.F.R. Part 718

In order to establish entitlement to benefits, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim also must be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of

[11] The methodology employed by the administrative law judge appears to have overstated the length of claimant's coal mine employment. The administrative law judge calculated the length of employment using the average *annual* earnings by year for miners who spent 125 days at a mine site, rather than the *daily* average earnings by year, as specified at 20 C.F.R. §725.101(a)(32)(iii). Decision and Order on Modification at 9 & n.11. We note, however, that the evidence of record does not establish the requisite fifteen years of qualifying coal mine employment using either method of calculation. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied because he failed to establish the existence of pneumoconiosis. Director's Exhibit 1. Consequently, claimant had to submit new evidence establishing the existence of pneumoconiosis. 20 C.F.R. §725.309(c). Additionally, because claimant sought modification of the denial of his subsequent claim for failing to satisfy the requirements of 20 C.F.R. §725.309, the issue before the administrative law judge was whether the new evidence submitted on modification, considered along with the evidence originally submitted in the subsequent claim, established a change in the applicable condition of entitlement. *See* 20 C.F.R. §725.309(c); *Hess v. Director, OWCP*, 21 BLR 1-141, 143 (1998).

Existence of Pneumoconiosis

The administrative law judge noted Judge Johnson's previous finding, affirmed by the Board, that the readings of two new x-rays dated March 6, 2008 and April 22, 2008 did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge then considered four readings of an additional x-ray dated October 11, 2012. Drs. Alexander and Miller, both of whom are dually-qualified as Board-certified radiologists and B readers, read the October 11, 2012 x-ray as positive for pneumoconiosis, while Drs. Shipley and Tarver, who possess equal radiological qualifications, read the x-ray as negative. Director's Exhibit 55; Claimant's Exhibits 1-2; Employer's Exhibits 1, 4.

The administrative law judge properly considered the physicians' radiological qualifications, and permissibly found that the October 11, 2012 x-ray was inconclusive, based on the physicians' conflicting interpretations. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256, 25 BLR 2-779, 2-793 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53, 16 BLR 2-61, 2-66 (4th Cir. 1992); Decision and Order on Modification at 16. Therefore, we affirm the administrative law judge's determination that the new x-ray evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

The administrative law judge accurately found that the record contains no biopsy or autopsy evidence for consideration pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order on Modification at 16. Additionally, the administrative law judge correctly determined that, because the record contains no evidence of complicated pneumoconiosis, claimant cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis set forth at 20 C.F.R. §718.304. *Id.* Further, the administrative law judge correctly noted that, because claimant did not establish at least fifteen years of coal mine employment, he cannot invoke the Section 718.305 rebuttable presumption of total disability due to pneumoconiosis. Therefore, we affirm the administrative law

judge's determination that the new evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2),(3).

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge reiterated Judge Johnson's previous finding, affirmed by the Board, that the new medical opinions of Drs. Forehand, Roatsey, Killeen, Sutherland, and Hippensteel, developed between 2006 and 2009, did not establish the existence of pneumoconiosis. Decision and Order at 17. The administrative law judge then considered the additional medical opinions of Drs. Forehand and Sutherland, and the treatment records of Dr. Habre, submitted by claimant on modification.[12]

In a report dated February 22, 2016, Dr. Forehand diagnosed claimant with legal pneumoconiosis[13] in the form of obstructive lung disease due to both coal mine dust exposure and cigarette smoking.[14] Claimant's Exhibit 4. In a report dated October 15, 2012, Dr. Sutherland, claimant's treating physician, opined that claimant suffers from clinical pneumoconiosis[15] and legal pneumoconiosis, in the form of restrictive and obstructive lung disease due to coal mine dust exposure. Director's Exhibit 66; Claimant's Exhibit 5. Dr. Habre, who examined claimant on March 19, 2013 at the request of his treating physician, diagnosed claimant with clinical pneumoconiosis, and

[12] The administrative law judge also considered, and discounted, Dr. Castle's opinion that claimant does not have pneumoconiosis. Decision and Order on Modification at 25-26; Employer's Exhibits 2, 7. The administrative law judge failed to consider the deposition of Dr. Killeen submitted by employer. Employer's Exhibit 6. However, as Dr. Killeen opined that claimant does not have pneumoconiosis, this error was harmless in this context. *See Larioni*, 6 BLR at 1-1278.

[13] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[14] Dr. Forehand previously conducted the Department of Labor-sponsored evaluation on April 22, 2008, and opined that claimant suffered from legal pneumoconiosis. Director's Exhibit 12.

[15] Clinical pneumoconiosis consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

legal pneumoconiosis, in the form of obstructive lung disease due to both smoking and coal mine dust exposure. Claimant's Exhibit 9.

The administrative law judge initially considered Dr. Forehand's opinion that claimant's obstructive lung disease was caused in part by coal mine dust exposure, based upon claimant's objective testing. Decision and Order on Modification at 25. The administrative law judge determined that Dr. Forehand considered coal mine employment and smoking histories consistent with the administrative law judge's findings.[16] *Id*. However, the administrative law judge permissibly found that Dr. Forehand's opinion was entitled to reduced weight, because it was undocumented and the physician relied upon evidence that was not submitted into the record.[17] *Id*.; *see Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006)(en banc)(McGranery & Hall, JJ., concurring & dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007)(en banc)(McGranery & Hall, JJ., concurring & dissenting); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-55 (1989) (en banc).

The administrative law judge considered Dr. Sutherland's opinion and treatment records, and noted that the physician was claimant's primary care physician for thirty years. Decision and Order on Modification at 25. However, the administrative law judge permissibly found Dr. Sutherland's diagnosis of clinical and legal pneumoconiosis to be not well-reasoned or documented, because the objective tests that the physician relied upon were not of record, and the physician failed to consider claimant's fifty-six pack-year smoking history.[18] *Id*.; *see* 20 C.F.R. §718.104(d)(5); *Milburn Colliery Co. v. Hicks*,

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[16] The administrative law judge found that claimant had a smoking history of at least fifty-six pack years, based upon claimant's hearing testimony that he smoked a pack and a half to two packs of cigarettes per day for thirty-seven or thirty-eight years. Decision and Order on Modification at 13-14 & n.15. Substantial evidence supports the administrative law judge's finding, which is therefore affirmed. Tr. at 36-37.

[17] Specifically, Dr. Forehand opined that claimant's coal mine dust exposure played an "important role" in his impairment based upon his exposure to coal mine dust, his normal diffusion capacity, and the pattern of impairment on his pulmonary function studies. Claimant's Exhibit 4. As was found by the administrative law judge, however, Dr. Forehand did not include the pulmonary function studies he relied upon, the date that the studies were performed, or the results of the studies. *Id*.

[18] Dr. Sutherland opined that claimant's chest x-rays demonstrated evidence of clinical pneumoconiosis, and that he suffers from obstructive lung disease and emphysema due to his coal mine dust exposure. Claimant's Exhibit 5. However, as the administrative law judge found, Dr. Sutherland did not include or identify the x-rays he relied upon to diagnose clinical pneumoconiosis, or the pulmonary function studies he

138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 440-41, 21 BLR 2-269, 2-273-74 (4th Cir. 1997); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988). Similarly, the administrative law judge permissibly found that Dr. Habre's opinion was not documented because, although the physician stated that his diagnoses of clinical and legal pneumoconiosis were based upon chest x-rays and pulmonary function studies, the physician did not indicate what x-rays or pulmonary function studies he relied upon. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-273-74.

The determination of whether a medical opinion is adequately reasoned and documented is for the administrative law judge as the factfinder to decide, *Clark*, 12 BLR at 1-155, and the Board is not authorized to reweigh the evidence. *Anderson*, 12 BLR at 1-113. As substantial evidence supports the administrative law judge's credibility determinations, we affirm the administrative law judge's determination that the new medical opinion evidence and treatment records did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Pursuant to 20 C.F.R. §§718.107 and 718.202(a)(4), the administrative law judge also considered four interpretations of three digital chest x-rays. Dr. DePonte, a dually-qualified radiologist, read the digital x-ray dated June 11, 2013 as positive for pneumoconiosis, Claimant's Exhibit 3, while Dr. Seaman, who is also dually-qualified, read the same x-ray as negative. Employer's Exhibit 5. The administrative law judge properly considered the qualifications of each reader, and permissibly found that the June 11, 2013 digital x-ray was inconclusive as to the existence of pneumoconiosis.[19] *See*

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relied upon to diagnose legal pneumoconiosis. The administrative law judge further noted, accurately, that Dr. Sutherland's treatment records do not contain a diagnosis of clinical pneumoconiosis, chronic obstructive pulmonary disease, or emphysema. *Id*.

[19] The administrative law judge considered two additional digital x-ray readings, neither of which was classified as positive for pneumoconiosis. Dr. Patel reviewed claimant's digital x-ray dated May 9, 2013, and opined that it demonstrated chronic interstitial fibrosis. Claimant's Exhibit 6. Dr. DePonte reviewed the digital x-ray dated September 24, 2013, and diagnosed chronic obstructive pulmonary disease. Claimant's Exhibit 7. The administrative law judge accurately found that neither physician classified the x-ray as positive for pneumoconiosis or related the changes on the x-rays to claimant's coal dust exposure, and therefore found that neither interpretation assisted claimant in establishing the existence of pneumoconiosis. Decision and Order on Modification at 28, n. 28-29.

Addison, 831 F.3d at 256, 25 BLR at 2-793; *Adkins*, 958 F.2d at 52-53, 16 BLR at 2-66; Decision and Order on Modification at 27.

The administrative law judge further considered Dr. Rao's interpretation of a CT scan dated October 2, 2015, and accurately found that it did not include a diagnosis of pneumoconiosis. Decision and Order on Modification at 27 n.27; Claimant's Exhibit 8. Consequently, we affirm the administrative law judge's determination that the new digital chest x-ray and CT scan evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that the new evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), we further affirm the administrative law judge's finding that claimant failed to establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c).[20] 20 C.F.R. §725.309(c).

[20] Because we affirm the denial of benefits, we need not address employer's cross-appeal contending that the administrative law judge erred in not considering whether granting modification would render justice under the Act, erred in his analysis of the evidence regarding the length of coal mine employment, erred in discrediting Dr. Castle's opinion, and failed to consider all of the evidence reflecting that claimant does not have pneumoconiosis. *See Larioni*, 6 BLR at 1-1278.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge