BRB Nos. 98-1204 BLA
and 97-0711 BLA

JOEL S. STENSON (deceased)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CRESCENT HILLS COAL COMPANY	)	
	)	
and	)	
	)	DATE ISSUED:
OLD REPUBLIC 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 Order Denying Petition for Modification of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Joel S. Stenson, Daisytown, Pennsylvania, *pro se*.

Hilary S. Daninhirsch (Thompson, Calkins & Sutter), Pittsburgh, Pennsylvania, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant,[1] without the assistance of an attorney, appeals the Order Denying Petition for Modification (95-BLA-2033) of Administrative Law Judge Daniel L. Leland (the administrative law judge) 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). Initially, the administrative law judge found the instant claim to be a request for modification of his Decision and Order on Remand dated January 7, 1997, pursuant to 20 C.F.R. §725.310.[2] In considering claimant's

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[1] Claimant was the miner, Joel Stenson. The miner's "lay person," James F. Rohaley, notified the Board by letter dated October 27, 1998 that the miner died on October 11, 1998. Included with the letter was a copy of the miner's death certificate. In the letter, Mr. Rohaley also stated that the miner's wife, Mary Stenson, pre-deceased the miner, having died on November 5, 1997.

We note that there was no indication of a party to be substituted as claimant in this case. Consequently, on remand, the administrative law judge must initially determine whether there is currently a proper party to this claim. *See generally* 20 C.F.R. §725.360.

[2] The miner filed his initial claim on June 29, 1973 with the Social Security Administration (SSA), which was finally denied by SSA on June 16, 1974. Director's Exhibit 34. Claimant filed an election card, seeking SSA review, which was denied by SSA on April 20, 1979 and also denied by the Department of Labor (DOL) on July 16, 1980. *Id.* The miner filed a second application for benefits on February 10, 1983, which was denied by the district director on April 28, 1983. Director's Exhibit 33. A third application for benefits was filed by the miner on June 14, 1984. Director's Exhibit 1. Following a formal hearing, Administrative Law Judge Thomas M. Burke denied benefits in a Decision and Order issued on July 20, 1989. Director's Exhibit 55. Within the decision, Judge Burke credited claimant with fifteen and three-quarters years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on claimant's June 1984 filing date. *Id.* In addition, Judge Burke found the medical opinion evidence sufficient to establish pneumoconiosis arising out of the miner's coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(c). However, Judge Burke found the evidence insufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied.

The miner filed a petition for modification on June 12, 1990, which was denied by the district director on November 27, 1990. Director's Exhibits 58, 60, 69. A second petition for modification was filed on June 13, 1991. Director's

Exhibit 70. Following a formal hearing, Administrative Law Judge Daniel L. Leland (the administrative law judge) denied the miner's request for modification in a Decision and Order issued on September 29, 1993. Director's Exhibit 108. The miner filed a third petition for modification on June 22, 1994. Director's Exhibit 109. Following the district director's denial, the miner requested a formal hearing and the case was again assigned to the administrative law judge. Director's Exhibit 125. Within his Decision and Order dated July 21, 1995, the administrative law judge initially denied the miner's request for a hearing. In addition, the administrative law judge found the newly submitted evidence insufficient to establish a change in conditions pursuant to Section 725.310 and, thus, denied the miner's request for modification. Director's Exhibit 127. The miner appealed this decision to the Board. Director's Exhibit 128.

In a Decision and Order issued on April 29, 1996, the Board vacated the administrative law judge's Decision and Order and remanded the case to the administrative law judge for further consideration of the modification issue. Noting that, subsequent to the administrative law judge's Decision and Order, the United States Court of Appeals for the Third Circuit held in *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995), that the administrative law judge must consider all of the evidence of record in determining whether a mistake in a determination of fact was made in the previous decision, the Board remanded the case to the administrative law judge for further consideration of the case pursuant to *Keating*. The Board, however, affirmed the administrative law judge's finding that the newly submitted evidence was insufficient to establish a change in conditions pursuant to Section 725.310. The Board also noted that the decision on whether to hold a hearing on modification is within the discretion of the administrative law judge and should be based on whether a hearing is necessary to render justice. *Stenson v. Crescent Hills Coal Co.*, BRB No. 95-2050 BLA (Apr. 29, 1996)(unpub.); Director's Exhibit 134.

On remand, the administrative law judge found the evidence of record, newly submitted and previously submitted, insufficient to establish a mistake in a determination of fact pursuant to Section 725.310. Additionally, the administrative law judge found that the newly submitted evidence was insufficient to establish a change in conditions pursuant to Section 725.310. Consequently, the administrative law judge denied the miner's request for modification in a Decision and Order issued on January 15, 1997. Director's Exhibit 135. The miner appealed this decision to the Board. Director's Exhibit 136. Noting that the miner submitted new evidence, which had not been considered previously by the administrative law judge, and also noting the miner's request for modification

request for modification dated March 19, 1997, the administrative law judge found that the newly submitted evidence was insufficient to establish a change in conditions pursuant to Section 725.310, finding that the medical evidence was insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c). In addition, the administrative law judge found the evidence insufficient to establish a mistake in a determination of fact in either the July 1989 Decision and Order of Administrative Law Judge Thomas M. Burke or the administrative law judge's own September 1993 Decision and Order. Accordingly, the administrative law judge denied claimant's petition for modification.

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dated March 19, 1997, *see* Director's Exhibits 139, 140, the Board, by Order dated April 14, 1997, dismissed the miner's appeal and remanded the case to the district director for modification proceedings. However, the Board stated that the miner may request reinstatement of the appeal with the Board following consideration of the request for modification. *Stenson v. Crescent Hills Coal Co.*, BRB No. 97-0711 BLA (Apr. 14, 1997)(Order)(unpub.); Director's Exhibit 141.

In a letter to the Board,[3] claimant notes that his prior appeal to the Board was dismissed in light of his submission of new evidence and the case was remanded to the district director to consider the new evidence as a petition for modification. In addition, claimant states that he was advised that if the petition for modification was denied, the Board would consider the original appeal as well as the most recent appeal as a result of the Board's April 1997 Order. In addressing the administrative law judge's most current decision, claimant contends that the administrative law judge erred in according greater weight to the opinion of Dr. Renn over the opinion of Dr. Bhatt, claimant's treating physician. Claimant further contends that the administrative law judge erred in not granting a hearing on the issues and, therefore, seeks to have his request for a hearing on his petition for modification granted and the case reassigned to another administrative law judge. In response, employer initially states that it cannot ascertain the nature of claimant's appeal, whether claimant is appealing the most recent decision in this case, seeking reinstatement of his previous appeal, or seeking modification of the current decision. Therefore, employer requests that the Board have claimant clarify his position.[4] Nonetheless, employer urges affirmance of the administrative law judge's denial of claimant's current petition for modification as supported by substantial evidence. In addition, employer requests that the Board "strike that portion of the Claimant brief/letter that aims defamatory comments at Dr. Renn." Finally, employer requests that the Board deny claimant's request for a hearing on his petition for modification, arguing that there are no grounds for such a request. Employer further suggests that the Board should deny claimant's request that the case be assigned to a new administrative law judge inasmuch as claimant has

[3] Claimant is represented by James Rohaley, a "lay person." The Board, in acknowledging this appeal, determined that claimant was not represented by legal counsel and, therefore, that a general standard of review would be applied in this appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

[4] Employer notes that claimant's appeal to the Board is not clear as to which of the decisions claimant is appealing and, thus, requests that the Board issue a Show Cause Order for claimant to clarify his position in this appeal. Contrary to employer's contention, claimant has sufficiently raised the reinstatement of his previous appeal, BRB No. 97-0711 BLA, as well as appealing the administrative law judge's current Decision and Order. Therefore, we grant claimant's request for reinstatement of his appeal in BRB No. 97-0711 BLA. Additionally, we grant employer's request to incorporate its March 1997 response brief to this appeal into its current response brief and will address the issues dealt with in both response briefs.

failed to show bias on the part of Judge Leland. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter stating that he will not file a response brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In this case arising within the jurisdiction of the United States Court of Appeals for the Third Circuit, claimant may establish modification by establishing either a change in conditions since the issuance of a previous decision or a mistake in a determination of fact in the previous decision. 20 C.F.R. §725.310(a). In considering whether a change in conditions has been established pursuant to Section 725.310, an administrative law judge is obligated to perform an independent assessment of the newly submitted evidence, considered in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement which defeated entitlement in the prior decision. *See Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993). Moreover, the fact-finder has broad discretion to correct mistakes of fact, including the ultimate fact of entitlement to benefits, contained within a case. *Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995); *see also O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971); *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

We initially address claimant's reinstated appeal of the administrative law judge's January 15, 1997 Decision and Order on Remand - Denying Benefits (1997 Decision and Order). Claimant, without the assistance of an attorney,[5] appeals, asserting that the administrative law judge failed to consider all of the relevant

[5] As previously noted, claimant was represented by a "lay person," James F. Rohaley, in filing his appeal to the Board. *See* Director's Exhibit 136. The Board acknowledged claimant's appeal, filed by Mr. Rohaley, as a *pro se* appeal and indicated that a general standard of review would be applied in this appeal. *Id.*

evidence inasmuch as he did not discuss the February 10, 1995 opinion of Dr. Levine. In addition, claimant generally contends that the administrative law judge erred in rendering a decision in this case without holding a formal hearing. In response, employer urges affirmance of the administrative law judge's denial of modification as supported by the evidence of record. The Director has filed a letter stating that he will not file a response brief in this appeal.

In his 1997 Decision and Order and pursuant to the Board's remand instructions,[6] the administrative law judge found that the evidence of record, old and new, did not establish a mistake in a determination of fact inasmuch as the evidence did not establish that claimant was totally disabled, the lone element of entitlement previously adjudicated against claimant. 1997 Decision and Order at 2; Director's Exhibit 135. In addition, the administrative law judge again found that the newly submitted evidence, consisting of new x-ray evidence and hospital records, was insufficient to establish a change in conditions because it did not address the issue of whether claimant was totally disabled, the element of entitlement previously adjudicated against claimant. *Id*.

Based on a review of the record, we affirm the administrative law judge's 1997 Decision and Order denying claimant's petition for modification as supported by substantial evidence. Contrary to claimant's contention, the administrative law judge did not neglect to consider the February 1995 opinion of Dr. Levine. Rather, this opinion consisted of a review of the x-ray interpretation by Dr. Fisher and did not consist of a diagnosis relevant to the issue of total respiratory disability. Director's Exhibit 122. Therefore, we hold that the administrative law judge properly found that the newly submitted evidence, consisting of x-ray reports and hospital records which did not comment on claimant's pulmonary condition, was insufficient to establish a change in conditions inasmuch as the new evidence

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[6] In his initial decision addressing claimant's June 22, 1994 petition for modification, the administrative law judge denied modification, finding that the new evidence failed to establish total respiratory disability pursuant to Section 718.204(c). *See* Director's Exhibit 127. However, pursuant to claimant's appeal, the Board vacated the administrative law judge's denial of modification and remanded the case for further consideration under *Keating* to determine whether the evidence as a whole established a mistake in a determination of fact and, thus, established modification. However, the Board affirmed the administrative law judge's finding that the newly submitted medical evidence was insufficient to establish a change in conditions pursuant to Section 725.310. *See Stenson*, BRB No. 95-2050 BLA, *supra*; Director's Exhibit 134.

addressed only the existence of pneumoconiosis and was not relevant to the issue of total respiratory disability pursuant to Section 718.204(c).[7] 1997 Decision and Order at 2; 20 C.F.R. §725.310; *see Nataloni, supra*.

Furthermore, we affirm the administrative law judge's finding that the record as a whole, old and new evidence, was insufficient to establish a mistake in a determination of fact in the previous findings. *See* 1997 Decision and Order at 2. The administrative law judge correctly set forth the issue to be determined, *i.e.*, the presence of total respiratory disability, and found that the evidence of record, including the new evidence, does not support a finding of total respiratory disability and, therefore, does not support a finding of a mistake in a determination of fact in either Judge Burke's 1989 Decision and Order or the administrative law judge's own 1993 Decision and Order. 1997 Decision and Order at 2. Inasmuch as a review of the record supports this determination, we affirm the administrative law judge's finding that the evidence of record does not support a finding of a mistake in a determination of fact as within a reasonable exercise of his discretion. *See Keating, supra; see also*, *Calfee v. Director OWCP*, 8 BLR 1-7 (1985). Accordingly, we affirm the administrative law judge's denial of claimant's June 1994 petition for modification as supported by substantial evidence. *See Keating, supra; Nataloni, supra*.

Regarding the administrative law judge's Order Denying Petition for Modification issued on May 27, 1998 (1998 Decision and Order), claimant contends that the administrative law judge erred in according greater weight to the opinion of Dr. Renn over the opinion of Dr. Bhatt, claimant's treating physician, because Dr. Renn did not conduct a full physical examination of claimant. Claimant further argues that the opinions of Dr. Levine, a pulmonary specialist, and Dr. Bhatt, claimant's treating physician, are sufficient to establish entitlement to benefits over

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[7] However, we note that error, if any, in the administrative law judge's failure to discuss the January 1995 medical opinion of Dr. Scott, that claimant does not suffer from a pulmonary or respiratory disability, Director's Exhibit 120, is harmless inasmuch as this opinion is supportive of the administrative law judge's ultimate determination. *See generally Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

the biased opinion of Dr. Renn. Claimant further contends that the administrative law judge erred in failing to conduct a formal hearing on his petition for modification.

Pursuant to claimant's March 1997 petition for modification, the administrative law judge found the evidence of record insufficient to establish either a mistake in a determination of fact or a change in conditions pursuant to Section 725.310. In finding that the newly submitted evidence was insufficient to establish a change in conditions since the prior denial, the administrative law judge found that the newly submitted positive x-ray interpretation and the new hospital records, while showing a multitude of serious ailments, did not provide a diagnosis of total pulmonary disability, and, therefore, were of little probative value to the issue of pulmonary disability. 1998 Decision and Order at 3. In addition, the administrative law judge found that the new blood gas study was non-qualifying and, thus, insufficient to demonstrate total disability under Section 718.204(c)(2). *Id.* In weighing the medical opinions pursuant to Section 718.204(c)(4), the administrative law judge accorded greater weight to the opinion of Dr. Renn, who opined that claimant is not disabled from doing his usual coal mine employment from a pulmonary standpoint, based upon Dr. Renn's superior professional qualifications, over the contrary opinion of Dr. Bhatt. *Id.* Consequently, the administrative law judge found that the newly submitted evidence was insufficient to support a finding of total disability pursuant to Section 718.204(c) and, thus, insufficient to establish a change in conditions pursuant to Section 725.310.

The administrative law judge also found that the medical evidence as a whole was insufficient to establish a mistake in a determination of fact pursuant to Section 725.310. In particular, the administrative law judge stated that Judge Burke, in his July 1989 Decision and Order, found that the evidence was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(4) and 718.203(c) but that the evidence was insufficient to establish total respiratory disability pursuant to Section 718.204(c). In determining that the record does not support a finding of a mistake in a determination of fact, the administrative law judge stated that, in addition to finding that the objective studies were insufficient to establish total respiratory disability, Judge Burke correctly weighed the medical opinion evidence and found that claimant failed to prove total disability under Section 718.204(c). 1998 Decision and Order at 2. The administrative law judge further stated that in his 1993 Decision and Order, he correctly found the newly submitted evidence insufficient to establish a change in conditions pursuant to Section 725.310, inasmuch as the evidence did not support a finding that claimant was totally disabled.[8] In reviewing his September 1993

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[8] In particular, the administrative law judge accorded greater weight to the

Decision and Order, the administrative law judge found that it, likewise, did not contain a mistake in a determination of fact. *Id.*

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opinion of Dr. Scott, that claimant was not totally disabled, than the contrary opinion of Dr. Levine, based on Dr. Scott's superior professional credentials. In addition, the administrative law judge found that the newly submitted objective studies did not produce qualifying values. 1993 Decision and Order; Director's Exhibit 108.

We affirm the administrative law judge's finding that the newly submitted evidence, namely, that evidence submitted since the administrative law judge's January 1997 decision, is insufficient to establish a change in conditions pursuant to Section 725.310. As the administrative law judge correctly noted, the denial of benefits in this claim was based on a finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c). 1998 Decision and Order at 3. Therefore, the administrative law judge properly found that the newly submitted x-ray evidence and the hospital records from claimant's most recent hospitalization are not relevant because they fail to indicate a totally disabling respiratory impairment, even though they diagnose numerous other serious medical conditions and, thus, they are not probative on this issue. 1998 Decision and Order at 3; *see also* Director's Exhibits 139, 150; *Nataloni, supra*. The administrative law judge also reasonably found that the newly submitted blood gas study, contained within the December 17, 1996 hospital discharge summary, was insufficient to demonstrate total disability inasmuch as it produced non-qualifying results.[9] 1998 Decision and Order at 3; Director's Exhibit 139; 20 C.F.R. §718.204(c)(2). Lastly, the administrative law judge reasonably accorded greater weight to the newly submitted opinion of Dr. Renn, who opined that claimant was not totally disabled from a pulmonary or respiratory standpoint, over the contradictory opinion of Dr. Bhatt based on Dr. Renn's superior qualifications.[10] 1998 Decision and Order at 3; Employer's Exhibit 1; *see Edmiston v. F & R Coal Co.*, 14 BLR 1-710 (1990). The administrative law judge also found that the opinion of Dr. Bhatt, claimant's treating physician, was insufficient to establish total respiratory disability, inasmuch as his diagnosis of total disability was based solely on claimant's symptom of shortness of breath and not on any medically acceptable diagnostic test and, therefore, the administrative law judge reasonably found this opinion entitled to little weight. 1998 Decision and Order at 3; Claimant's Exhibit 1; *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Lastly, we reject claimant's assertion that Dr. Renn's opinion should not be considered because Dr. Renn is biased inasmuch as claimant's allegations of bias are not sufficient, in and of themselves, but must be supported by concrete evidence of

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[9] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (c)(2).

[10] The record indicates that Dr. Renn is Board-certified in Internal Medicine and Pulmonary Diseases. Employer's Exhibit 1. Dr. Bhatt's qualifications, however, are not included in the record.

record, which claimant has not submitted.[11] *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*). Inasmuch as the administrative law judge considered all of the newly submitted evidence and reasonably found that it was insufficient to establish total respiratory disability pursuant to Section 718.204(c), we affirm the administrative law judge's finding that this evidence is insufficient to establish a change in conditions pursuant to Section 725.310. *See Nataloni, supra*.

We, however, vacate the administrative law judge's finding that the evidence of record is insufficient to establish a mistake in a determination of fact pursuant to Section 725.310 and remand the case to the administrative law judge to consider the findings of fact within the record as a whole. *See Keating, supra*. Specifically, the administrative law judge found that the 1989 Decision and Order of Judge Burke and the administrative law judge's 1993 Decision and Order did not contain a mistake in a determination of fact. 1998 Decision and Order at 2-3; *see* Director's Exhibits 55, 108. However, the administrative law judge did not discuss the most recent decisions issued on July 21, 1995 and January 15, 1997, the latter decision giving rise to the current petition for modification. *See* Director's Exhibits 127, 135. Consequently, on remand, the administrative law judge must consider the entire claim to determine whether the record as a whole supports a finding of a mistake in a determination of fact. *Keating, supra*.

With respect to the administrative law judge's finding that the 1989 Decision and Order of Judge Burke (1989 Decision and Order) and the administrative law judge's 1993 Decision and Order (1993 Decision and Order) do not contain a mistake in a determination of fact, we affirm these findings as supported by substantial evidence. In discussing the 1989 Decision and Order, the administrative law judge reasonably found that this decision does not contain a mistake in a determination of fact inasmuch as Judge Burke correctly found that the evidence of record was insufficient to establish total respiratory disability pursuant to Section 718.204(c). *See Keating, supra*. Specifically, the administrative law judge found that Judge Burke properly concluded that the weight of the pulmonary function study evidence as well as the weight of the blood gas study evidence was insufficient to demonstrate total disability. 1998 Decision and Order at 2; *see also* 1989 Decision and Order at 11-12; 20 C.F.R. §718.204(c)(1), (c)(2). Similarly, the

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[11] Moreover, we deny employer's motion to strike claimant's contentions of bias regarding Dr. Renn and his medical opinion, inasmuch as these allegations have been affirmatively addressed.

administrative law judge found that Judge Burke reasonably determined that the weight of the medical opinion evidence was insufficient to establish total disability pursuant to Section 718.204(c)(4). 1998 Decision and Order at 2; 1989 Decision and Order at 13. Inasmuch as the administrative law judge reviewed the evidence of record considered by Judge Burke and reasonably found that it supports Judge Burke's findings of fact, we affirm his finding that the 1989 Decision and Order of Judge Burke does not contain a mistake in a determination of fact. *See Keating, supra*; *see also Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Calfee, supra*.

Likewise, we affirm the administrative law judge's finding that the 1993 Decision and Order did not contain a mistake in a determination of fact as within a reasonable exercise of his discretion. Considering his 1993 decision, the administrative law judge found that the evidence of record submitted since Judge Burke's 1989 decision supported his finding that claimant failed to establish total respiratory disability pursuant to Section 718.204(c). 1998 Decision and Order at 3; *see* 1993 Decision and Order. In particular, the administrative law judge found that the objective studies submitted since Judge Burke's decision did not produce qualifying values, *see* 1993 Decision and Order at 4, 7-8, and, of the two new medical opinions, the opinion of Dr. Scott, that claimant was not totally disabled, was entitled to greater weight than the contrary opinion of Dr. Levine because it was better supported by the underlying documentation and the evidence of record, *see* 1993 Decision and Order at 4-6, 8; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). In addition, the administrative law judge reasonably accorded greater weight to the opinion of Dr. Scott based on his superior professional qualifications. *Id.* Consequently, the administrative law judge found that the 1993 Decision and Order denying claimant's petition for modification did not contain a mistake in a determination of fact. A review of the record indicates that the administrative law judge accurately set forth the relevant evidence of record within his 1993 Decision and Order, *see* Director's Exhibit 108, and inasmuch as the administrative law judge reasonably weighed the evidence pursuant to Sections 718.204(c) and 725.310, we affirm his finding that the 1993 Decision and Order does not contain a mistake in a determination of fact. *See Keating, supra; see also Calfee, supra*.

Finally, claimant makes a general request that the case be remanded to the administrative law judge for a formal hearing on the issue of modification. However, as the Board held in its previous Decision and Order pursuant to claimant's last petition for modification, *see* Director's Exhibit 134, an administrative law judge is not required to hold a formal hearing on every request for modification. Rather, it is within the administrative law judge's discretion, as trier-of-fact, to determine whether a hearing on modification is necessary to render justice in a particular

case. *See Napier v. Director, OWCP*, 17 BLR 1-111 (1993); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *cf. Betty B Coal Co. v. Director, OWCP*, [*Stanley*], 1999 WL 960763 (4th Cir. Oct. 21, 1999); *Cunningham v. Island Creek Coal Co.*, 144 F.3d 388, 21 BLR 2- 384 (6th Cir. 1998); *Arnold v. Peabody Coal Co.*, 41 F.3d 1203, 19 BLR 2- 22 (7th Cir. 1994). Consequently, on remand, the determination as to the necessity of a hearing on the issue of modification is within the administrative law judge's discretion as trier-of-fact.[12] *Id.*

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[12] We also reject claimant's request that the case be reassigned to a new administrative law judge on remand. Claimant has not substantiated his request for reassignment with any specific allegations of bias on the part of the administrative law judge and adverse rulings, by themselves, are not sufficient to show bias on the part of the administrative law judge. *See generally Orange v. Island Creek Coal Co.*, 786 F.2d 724, 8 BLR 2-192 (6th Cir. 1986); *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101 (1992).

Accordingly, the administrative law judge's Order Denying Petition for Modification is affirmed in part, vacated in part and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge