

BRB No. 09-0302 BLA

TERRY SHADD)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 01/20/2010
)	
ELKAY MINING COMPANY)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Francesca Tan and William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (2008-BLA-05024) of Administrative Law Judge Adele Higgins Odegard, with respect to a subsequent miner's claim filed on November 29, 2006, 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.*

¹ On September 24, 2009, claimant's attorney notified the Board that claimant died on December 5, 2008, and that claimant's claim will be pursued by the executrix of his estate.

(the Act).² After crediting claimant with eleven years of coal mine employment, the administrative law judge adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge concluded that while claimant proved that he was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv) and, thus, established a change in an applicable condition of entitlement under 20 C.F.R. §725.309(d), claimant failed to establish the presence of pneumoconiosis under 20 C.F.R. §718.202(a)(1), (3), (4) or that his total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge incorrectly weighed the x-ray evidence under 20 C.F.R. §718.202(a)(1) and the evidence relevant to the existence of complicated pneumoconiosis under 20 C.F.R. §§718.202(a)(3), 718.304(a), (c). In addition, claimant asserts that the administrative law judge erred in failing to find legal pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(4). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.³

The Board's scope of review is defined by statute. The administrative law judge's findings must be affirmed if they are supported by substantial evidence, rational, and in accordance with applicable law.⁴ 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).

² Claimant filed his initial claim for benefits on April 29, 1993, which was denied by Administrative Law Judge Vivian Schreter-Murray on June 20, 1995, for failing to establish the existence of pneumoconiosis or total disability. Director's Exhibit 1. Claimant then filed another claim for benefits on April 5, 2001, which was denied by the district director on April 26, 2002, for failure to prove any element of entitlement. Director's Exhibit 2. Claimant took no further action until filing the current subsequent claim on November 29, 2006. Director's Exhibit 4.

³ We affirm the administrative law judge's findings that claimant established total disability at 20 C.F.R. §718.204(b)(2)(ii), (iv) and, thus, a change in an applicable condition of entitlement under 20 C.F.R. §725.309(d), but failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2), the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(b) and total disability at 20 C.F.R. §718.204(b)(2)(i), (iii), as these findings are not challenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 12, 26-30.

⁴ The record reflects that claimant's last coal mine employment was in West Virginia. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

I. 20 C.F.R. §718.202(a)(1)

In evaluating whether claimant established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), the administrative law judge considered seven interpretations of an x-ray dated January 17, 2007 and four interpretations of an x-ray dated September 5, 2007. Of the physicians providing interpretations of the x-rays, the record reflects that Drs. Ranavaya and Repsher were B readers; Drs. Alexander, Miller, Scott, and Wheeler were dually-qualified as Board-certified radiologists and B-readers; and Dr. Ahmed was identified solely as a Board-certified radiologist. Director's Exhibit 16; Claimant's Exhibits 1-4, 19; Employer's Exhibits 1-2.

Drs. Ranavaya, Alexander, Miller, and Ahmed interpreted the January 17, 2007 x-ray as positive for pneumoconiosis. Director's Exhibit 16; Claimant's Exhibits 1-3. In contrast, Drs. Scott, Wheeler, and Repsher read this film as negative for pneumoconiosis. Director's Exhibits 17-18. Regarding the September 5, 2007 x-ray, Drs. Alexander and Miller interpreted it as positive for pneumoconiosis and Drs. Scott and Repsher interpreted it as negative for pneumoconiosis. Claimant's Exhibits 4, 19; Employer's Exhibits 1-2.

The administrative law judge gave more weight to the readings by Drs. Alexander, Miller, Scott and Wheeler because, as dually-qualified radiologists, "they have wide professional training in all aspects of [x]-ray interpretation" and "because this designation indicates specific training in and familiarity with assessing pneumoconiotic conditions by [x]-ray." Decision and Order at 10-11. As there were readings by dually-qualified radiologists regarding each of claimant's x-rays that were both positive and negative, the administrative law judge found that the x-ray evidence was in equipoise regarding the existence of pneumoconiosis. *Id.*

United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

On appeal, claimant asserts that, contrary to the administrative law judge's determination, Dr. Ahmed is a B reader, in addition to being a Board-certified radiologist. Claimant also argues that, while the opinions of dually-qualified physicians should be given greater weight, the administrative law judge must still consider all of the interpretations.

We affirm the administrative law judge's findings at 20 C.F.R. §718.202(a)(1), as they are rational and supported by substantial evidence. Contrary to claimant's assertion, it was his obligation to obtain and submit evidence relevant to the physicians' credentials. Although the administrative law judge could have taken judicial notice of Dr. Ahmed's additional qualification as a B reader, as claimant now urges, she was not required to do so. *See Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); 29 C.F.R. §18.45.

Further, contrary to claimant's contention, the administrative law judge considered the interpretations of all of the physicians, including the B-readers. *See* Decision and Order at 6-11. The administrative law judge then acted within her discretion in giving the greatest weight to the opinions of those identified as dually-qualified radiologists. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). In addition, despite claimant's statements to the contrary, the administrative law judge was not required to rely on numerical superiority in making her findings regarding the x-ray evidence. Indeed, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has expressed disapproval of the "counting of heads." *Adkins*, 958 F.2d at 52, 16 BLR at 2-66; *see Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990).

Accordingly, we affirm the administrative law judge's finding at 20 C.F.R. §718.202(a)(1), that claimant failed to prove the existence of simple coal workers' pneumoconiosis by a preponderance of the x-ray evidence.

II. 20 C.F.R. §718.304

In evaluating whether claimant established the existence of complicated pneumoconiosis at 20 C.F.R. §718.304, the administrative law judge considered the x-ray readings that she addressed pursuant to 20 C.F.R. §718.202(a)(1). Drs. Ranavaya, Alexander, Miller, and Ahmed interpreted the January 17, 2007 x-ray as positive for complicated coal workers' pneumoconiosis with a category A opacity noted. Director's Exhibit 16; Claimant's Exhibits 1-3. Each of these physicians commented that while the opacity in claimant's upper right zone appeared to be consistent with complicated pneumoconiosis, they were unable to rule out another progressive pathology, such as rheumatoid arthritis or a malignancy. *Id.* In contrast, Drs. Scott, Wheeler, and Repsher found that the January 17, 2007 x-ray was negative for complicated pneumoconiosis.

Director's Exhibits 17-18. Regarding the September 5, 2007 x-ray, Drs. Alexander and Miller found that it was positive for complicated coal workers' pneumoconiosis with a category A opacity, and Drs. Scott and Repsher interpreted it as negative for complicated pneumoconiosis. Claimant's Exhibits 4, 19; Employer's Exhibits 1-2.

The administrative law judge also considered Dr. Marzouk's report. Dr. Marzouk examined claimant on July 31, 2006, and interpreted a CT scan. Claimant's Exhibit 9. Dr. Marzouk diagnosed "apical fibrosis of bilateral upper lobes and lower lobes[,] which may be progressive massive fibrosis consistent with silicosis and the calcified lymph nodes may be consistent with the old tuberculosis." *Id.* Dr. Marzouk also found evidence of apical emphysema along with "peripheral lower lobe honeycombing [that] may be some sort of ground-glass distribution." *Id.*

Consistent with her findings at 20 C.F.R. §718.202(a)(1), the administrative law judge gave the most weight to the readings performed by Drs. Alexander, Miller, Scott, and Wheeler because they are dually-qualified. Decision and Order at 11. The administrative law judge observed that the dually-qualified radiologists did not set forth the rationale underlying their respective determinations as to whether the abnormality observed was pneumoconiosis. *Id.* The administrative law judge also indicated, in a footnote, that the record contains evidence that claimant suffered from rheumatoid arthritis. *Id.* at n.13. The administrative law judge concluded that, because she had no information upon which to judge the accuracy of the conflicting readings, she could not determine which readings were more credible. *Id.* Accordingly, the administrative law judge found that the x-ray interpretations by the dually-qualified readers regarding the existence of complicated pneumoconiosis were in equipoise. *Id.* at 12. With respect to the interpretation of the January 17, 2007 x-ray by Dr. Ranavaya, a B reader, the administrative law judge found that it was entitled to little weight, as Dr. Ranavaya did not address the possibility that the large opacity that he observed on claimant's x-ray was attributable to tuberculosis (TB), although he was aware of claimant's history of the disease.⁵ *Id.* at 19. Lastly, the administrative law judge determined that Dr. Marzouk's CT scan interpretation was entitled to little weight, as it was equivocal.⁶ *Id.* at 20.

⁵ The administrative law judge also considered, pursuant to 20 C.F.R. §718.202(a)(4), whether Dr. Ranavaya's medical report was sufficient to establish the existence of pneumoconiosis. Decision and Order at 19. However, Dr. Ranavaya's sole diagnosis, relevant to claimant's burden of proof at 20 C.F.R. §718.202(a), was of complicated pneumoconiosis and was based on his own x-ray reading. Director's Exhibit 16. Accordingly, we will address the administrative law judge's weighing of Dr. Ranavaya's x-ray interpretation under 20 C.F.R. §718.304(a).

⁶ The administrative law judge addressed Dr. Marzouk's CT scan reading at 20 C.F.R. §718.202(a)(4). Decision and Order at 20. We will address his findings with

Because the administrative law judge found that the x-ray evidence was in equipoise, and that there was no other credible evidence of complicated pneumoconiosis, she determined that claimant failed to establish the existence of the disease at 20 C.F.R. §718.304. Decision and Order at 12-13, 20.

Claimant again asserts that, contrary to the administrative law judge's determination, Dr. Ahmed is a dually-qualified reader and that the administrative law judge did not fully consider all of the x-ray interpretations. Claimant also argues that the administrative law judge erred in stating that none of the physicians explained why the lesions observed on claimant's x-rays represented complicated pneumoconiosis. In addition, claimant states that Dr. Alexander's finding that cancer was not present in the September 5, 2007 x-ray, established that the large opacity observed in claimant's right upper lobe was complicated pneumoconiosis. Further, claimant argues that the testimony the administrative law judge relied on to find that claimant had rheumatoid arthritis actually established that claimant did not have the disease and asserts that Dr. Abbas, claimant's treating rheumatologist, ruled it out. Claimant also maintains that the administrative law judge erred in discrediting the opinions of Drs. Ranavaya and Marzouk. Claimant further asserts that Dr. Marzouk's diagnosis of complicated pneumoconiosis should have been given additional weight, as he was a treating physician.

These contentions are without merit. As discussed previously, the administrative law judge permissibly accorded less weight to Dr. Ahmed's interpretation and more weight to the opinions of the dually-qualified radiologists of record. *See* discussion, *supra* at 4. Further, the administrative law judge considered the interpretations of all of the physicians and was not required to rely on numerical superiority in making her finding as to whether the x-ray evidence was sufficient to establish the existence of complicated pneumoconiosis. *See Adkins*, 958 F.2d at 52, 16 BLR at 66; *Wilt*, 14 BLR at 1-76; Decision and Order at 6-11.

Claimant also incorrectly asserts that the administrative law judge substituted her opinion for that of the medical experts in determining that the physicians did not explain their determinations as to whether the lesions they observed on x-ray were pneumoconiotic in nature. *See* Decision and Order at 11. Rather, the administrative law judge permissibly determined that the x-ray readings offered by dually-qualified radiologists were in equipoise because they gave conflicting opinions as to the nature of the large mass in claimant's right upper lung, and provided no basis upon which to

respect to this evidence under 20 C.F.R. §718.304(c), as the physician's diagnoses pertain to complicated pneumoconiosis. Claimant's Exhibit 9.

determine which interpretations were more credible. *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). Regarding Dr. Ranavaya's x-ray interpretation, the administrative law judge acted within her discretion in determining that it did not establish the existence of complicated pneumoconiosis, as Dr. Ranavaya did not address the significance of claimant's history of TB. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).

There is also no merit to claimant's argument that Dr. Alexander's exclusion of cancer as the source of the large opacity he observed in the right upper lobe of claimant's lungs was sufficient to establish the existence of complicated pneumoconiosis. Claimant fails to provide any medical support for his assertion that if he had lung cancer, "one would expect a significant progression . . . since the time of the [January 17, 2007] chest x-ray until the taking of the [September 5, 2007] chest x-ray." Claimant's Brief at 17-18.

In addition, while Dr. Alexander omitted any mention of cancer from his interpretation of the September 5, 2007 x-ray, Dr. Miller, the other dually-qualified physician who found the September 5, 2007 x-ray to be positive for pneumoconiosis, continued to state that a malignancy could not be excluded. *See* Claimant's Exhibits 4, 19. The administrative law judge also did not err in noting that there was evidence in the record indicating that claimant suffered from rheumatoid arthritis, as Drs. Zaldivar and Ranavaya reported a history of rheumatoid arthritis and claimant testified at the hearing that he had the disease and took medication for it. Director's Exhibits 1-2; Hearing Transcript at 30-31; Decision and Order at 11 n.13. Consequently, the administrative law judge acted within her discretion in finding that the x-ray evidence was insufficient to establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(a). *Grizzle*, 994 F.2d at 1096, 17 BLR at 2-127.

Relevant to 20 C.F.R. §718.304(c), the administrative law judge acted within her discretion in finding, pursuant to 20 C.F.R. §718.304(c), that Dr. Marzouk's opinion was equivocal, based on his notation that the CT scan revealed "apical fibrosis . . . which *may be* progressive massive fibrosis consistent with silicosis and the calcified lymph nodes *may be* consistent with the old [TB]." Claimant's Exhibit 9 (emphasis added); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Grizzle*, 994 F.2d at 1096, 17 BLR at 2-127; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). In light of the administrative law judge's rational determination that Dr. Marzouk's opinion was not well-reasoned, she did not err in declining to accord it greater weight due to Dr. Marzouk's role as claimant's treating physician. 20 C.F.R. §718.104(d)(5); *Hicks*, 138 F.3d at 533-34, 21 BLR at 2-2-336-37; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-275-

76. Accordingly, we affirm the administrative law judge's finding that claimant failed to prove the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304.⁷

III. 20 C.F.R. §718.202(a)(4)

The administrative law judge considered the opinions of Drs. Repsher, Hippensteel, Ranavaya, Marzouk and Abbas pursuant to 20 C.F.R. §718.202(a)(4).⁸ Dr. Repsher, who is Board-certified in pulmonary disease and internal medicine, examined claimant on September 5, 2007 and submitted a report dated October 4, 2007. Employer's Exhibit 1. Dr. Repsher stated that there was no evidence of clinical or legal pneumoconiosis, based on the x-ray and CT scan evidence he reviewed and claimant's pulmonary function study and arterial blood gas study results. *Id.* Instead, Dr. Repsher noted that claimant's chest x-ray and CT scan revealed far advanced, healed TB and severe bullous or centrilobular emphysema, unrelated to coal dust exposure. *Id.* In his deposition, dated August 5, 2008, Dr. Repsher reiterated the findings in his report. Employer's Exhibit 9.

Dr. Hippensteel, who is Board-certified in pulmonary disease and internal medicine, reviewed claimant's medical reports and submitted a report dated December 10, 2007. Dr. Hippensteel diagnosed "a conglomerate opacity associated with calcified lymph nodes, typical for granulomatous disease with a history of [TB] that required treatment." Employer's Exhibits 3, 8. Dr. Hippensteel also opined that claimant's basilar interstitial lung disease was due to his history of rheumatoid arthritis, a disease of the general public unrelated to coal dust inhalation. *Id.*

Dr. Ranavaya, who holds an advanced degree in occupational medicine, examined claimant on January 17, 2007, at the request of the Department of Labor. Director's Exhibit 16. Dr. Ranavaya diagnosed complicated coal workers' pneumoconiosis, based on claimant's coal mine employment history and an x-ray. *Id.* He also diagnosed coronary artery disease, based upon claimant's history. *Id.*

⁷ We also affirm the administrative law judge's determination that the presumptions set forth in 20 C.F.R. §§718.305 and 718.306 are not available in this case, as it has not been challenged on appeal. *See Skrack*, 6 BLR at 1-711.

⁸ The administrative law judge also considered whether the CT scan evidence was sufficient to establish the existence of pneumoconiosis and found that the readings by Drs. Alexander, Scott and Scatarige were, "at best, equivocal." Decision and Order at 25. As it is unchallenged on appeal, we affirm this finding. *See Skrack*, 6 BLR at 1-711.

Dr. Marzouk examined claimant on July 31, 2006, and read a CT scan. Claimant's Exhibit 9. Dr. Marzouk noted that claimant's CT scan may be consistent with progressive massive fibrosis related to silicosis. *Id.*

Dr. Abbas submitted a report dated December 22, 2005, in which he diagnosed nodal osteoarthritis, left lateral epicondylitis, bilateral knee osteoarthritis, and chronic mechanical neck and back pain. Claimant's Exhibit 11. Dr. Abbas indicated that he did not see any clinical evidence of an underlying inflammatory joint disease, like rheumatoid arthritis, or fibromyalgia pain syndrome. *Id.*

The administrative law judge found the opinions of Drs. Repsher and Hippensteel to be more persuasive regarding the cause of the large abnormality in claimant's right upper lung, because they were aware of claimant's TB history and discussed this in their interpretations of claimant's x-rays.⁹ Decision and Order at 20. The administrative law judge also gave their opinions "significant weight" because they are Board-certified in pulmonary disease and, therefore, "familiar with the appearance of old [TB] lesions on [x]-ray." *Id.* Because the administrative law judge determined that none of the physicians of record had diagnosed legal pneumoconiosis, she did not discuss the portions of the opinions of Drs. Repsher and Hippensteel in which they ruled out the presence of legal pneumoconiosis. *Id.* The administrative law judge further found that the opinions of Drs. Ranavaya, Marzouk and Abbas did not contain diagnoses of simple pneumoconiosis.

Claimant argues that the administrative law judge erred in failing to weigh Dr. Willis's PET scan interpretation at 20 C.F.R. §718.202(a)(4), and that Dr. Willis's diagnosis of coal workers' pneumoconiosis should have been given additional weight, based upon his status as a treating physician. Claimant further asserts that the administrative law judge improperly discounted Dr. Ranavaya's opinion regarding legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and that the administrative law judge should have considered Dr. Marzouk's status as a treating physician. Claimant's allegations of error are without merit.

⁹ Dr. Repsher interpreted claimant's September 5, 2007 x-ray and CT scan as showing no evidence of coal workers' pneumoconiosis but revealing far advanced, healed tuberculosis and severe bullous (centrilobular) emphysema. Employer's Exhibits 1, 9 at 24-27. Dr. Hippensteel reviewed other physicians' interpretations of claimant's x-rays, including those dated May 12, 1993, July 10, 2001, January 17, 2007, and September 5, 2007 and CT scans, dated July 31, 2006, October 11, 2006. Employer's Exhibits 3, 8 at 14-16, 21, 26.

We affirm the administrative law judge's finding that none of the physicians determined that claimant had legal pneumoconiosis, as the administrative law judge accurately characterized the medical opinions of record. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). In addition, contrary to claimant's argument, the fact that the administrative law judge did not weigh Dr. Willis's interpretation of an October 2006 PET scan under 20 C.F.R. §718.202(a)(4) does not constitute error requiring remand, as Dr. Willis did not render an independent diagnosis of pneumoconiosis.¹⁰ *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). With respect to the opinions of Drs. Ranavaya and Marzouk, the administrative law judge determined correctly that both were silent as to the existence of simple clinical pneumoconiosis. Decision and Order at 20; Claimant's Exhibit 9. Furthermore, as previously indicated, the administrative law judge rationally determined that the diagnoses of complicated pneumoconiosis rendered by Drs. Ranavaya and Marzouk were entitled to little weight. *See discussion supra* at 6-7; 20 C.F.R. §718.104(d)(5); *Hicks*, 138 F.3d at 533-34, 21 BLR at 2-2-336-37; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-275-76.

We affirm, therefore, the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Moreover, in light of our affirmance of the administrative law judge's findings at 20 C.F.R. §718.202(a)(1)-(4), we also affirm the administrative law judge's conclusion that, based upon a weighing of all of the evidence, claimant failed to meet his burden of establishing the existence of pneumoconiosis at 20 C.F.R. §718.202(a). Because claimant has failed to prove an essential element of entitlement, we affirm the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

¹⁰ Dr. Willis noted a history of coal workers' pneumoconiosis in his report and stated:

[The] images demonstrate hypermetabolic uptake in the right upper lobe where there is consolidation on the [July 2006] CT scan[.] The findings are problematic in a patient with coal worker's pneumoconiosis[,] as this can appear falsely positive on PET scan. Malignancy cannot be excluded, however, and biopsy of the right upper lobe mass may ultimately be necessary.

Claimant's Exhibit 7.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge