BRB No. 09-0434 BLA

ODVERT F. CARTER, SR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TEDS COAL COMPANY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 01/28/2010
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Odvert F. Carter, Drakesboro, Kentucky, *pro se*.

Allison B. Moreman (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

Emily Goldberg-Kraft (Deborah Greenfield, Acting Deputy Solicitor; Rae Ellen Frank James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (05-BLA-6321) of Administrative Law Judge William S. Colwell denying benefits on a claim filed on March 2, 2004, 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). This case involves a subsequent claim filed on March 2, 2004.[1] After crediting claimant with six years and four months of coal mine employment,[2] the administrative law judge considered whether the evidence was sufficient to establish modification pursuant to 20 C.F.R. §725.310. The administrative law judge found that the new evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or total disability pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge found that claimant failed to establish a change in conditions pursuant to 20 C.F.R. §725.310. The administrative law judge also found that there was not a mistake in a determination of fact pursuant to 20 C.F.R. §725.310. In light of these findings, the administrative law judge found that claimant failed to establish that one of the applicable conditions of entitlement had changed since the date upon which the denial of claimant's prior claim became final. 20 C.F.R. §725.309. Consequently, the administrative law denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a brief, requesting that the case be remanded for reconsideration of the medical evidence.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated

[1] Claimant's two prior claims, filed on March 3, 1989 and September 28, 1992, were denied by the district director because claimant did not establish any of the elements of entitlement. Director's Exhibits 1, 2.

[2] The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibit 5. 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 (1989)(*en banc*).

by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a 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. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Section 725.309

We initially note that the administrative law judge was not required to consider whether the evidence was sufficient to establish modification of the district director's denial of claimant's subsequent claim.[3] The Board has held that an administrative law judge is not required to make a preliminary determination regarding whether a claimant has established a basis for modification of the district director's denial of benefits before reaching the merits of entitlement. Rather, the Board has recognized that such a determination is subsumed into the administrative law judge's decision on the merits. The Board has held that an administrative law judge is not constrained by any rigid procedural process in adjudicating claims in which modification of the district director's decision is sought. *Motichak v. Beth Energy Mines, Inc.*, 17 BLR 1-14 (1992); *Kott v. Director, OWCP*¸ 17 BLR 1-9 (1992). The administrative law judge, therefore, was authorized to address the merits of claimant's subsequent claim without first addressing whether the evidence was sufficient to establish modification of the district director's denial of the claim.

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also 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(d); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he failed to establish that he had pneumoconiosis or was totally disabled by a respiratory or

[3] The district director denied claimant's 2004 subsequent claim on December 13, 2004 because he found that claimant did not establish any of the elements of entitlement. Director's Exhibit 59. After claimant filed a request for modification, the district director issued a Proposed Decision and Order awarding benefits on May 25, 2005. Director's Exhibits 61, 64.

pulmonary impairment. Director's Exhibit 2. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing either that he suffers from pneumoconiosis or that he is totally disabled. 20 C.F.R. §725.309(d)(2), (3).

The Existence of Pneumoconiosis

Section 718.202(a)(1)

The administrative law judge initially addressed whether the new x-ray evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge considered six interpretations of four x-rays taken on September 3, 2004, October 13, 2004, March 28, 2006, and September 21, 2006. The administrative law judge properly accorded greater weight to the interpretations rendered by physicians with the dual qualifications of B reader and Board-certified radiologist. *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 10-11.

Dr. Simpao, a physician without any special radiological qualifications, interpreted the Department of Labor-sponsored September 3, 2004 x-ray as positive for pneumoconiosis, Director's Exhibit 13, while Drs. Wiot and Binns, each qualified as a B reader and Board-certified radiologist, interpreted the same x-ray as negative for pneumoconiosis.[4] Director's Exhibit 20; Employer's Exhibit 1. The administrative law judge acted within his discretion in crediting the negative interpretations of Drs. Wiot and Binns of the September 3, 2004 x-ray, over Dr. Simpao's positive interpretation, based upon their superior qualifications. 20 C.F.R. §718.202(a)(1); *see Adkins*, 958 F.2d at 52, 16 BLR at 2-65; *Sheckler*, 7 BLR at 1-131; Decision and Order at 21. The administrative law judge, therefore, permissibly found that this x-ray was negative for pneumoconiosis.[5] *Id.*

[4] Dr. Barrett, a B reader and Board-certified radiologist, interpreted the September 3, 2004 x-ray for quality purposes only. Director's Exhibit 14.

[5] The regulations provide for claimant and the responsible operator to each submit an x-ray interpretation in rebuttal to the x-ray interpretation submitted by the Director pursuant to 20 C.F.R. §725.406. *See* 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). In this case, employer submitted Dr. Wiot's x-ray interpretation as its rebuttal to the Department of Labor (DOL)-sponsored x-ray interpretation. However, employer also submitted a second interpretation of the DOL-sponsored x-ray interpretation, Dr. Binns' negative interpretation. Because employer did not designate Dr. Binns' x-ray interpretation as one of its two affirmative x-ray readings, *see* 20 C.F.R. §725.414(a)(3)(i), Dr. Binns' x-ray interpretation exceeds the evidentiary limitations and should not have been considered. However, even if Dr. Binns' x-ray interpretation had been excluded, the administrative

The administrative law judge correctly noted that the remaining three x-rays taken on October 13, 2004,[6] March 28, 2006,[7] and September 21, 2006[8] were uniformly interpreted as negative for pneumoconiosis.[9] Decision and Order at 21. Consequently, we affirm the administrative law judge's finding that the new x-ray evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Section 718.202(a)(2), (3)

Because there is no biopsy evidence of record, claimant is precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Furthermore, the administrative law judge properly found that claimant is not entitled to any of the statutory presumptions set forth at 20 C.F.R. §718.202(a)(3).[10] Decision and

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law judge would have still credited Dr. Wiot's negative interpretation of claimant's September 3, 2004 x-ray over Dr. Simpao's positive interpretation, based upon Dr. Wiot's superior qualifications. Consequently, the administrative law judge's error in considering Dr. Binns' x-ray interpretation is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[6] Dr. Wiot, a B reader and Board-certified radiologist, interpreted claimant's October 13, 2004 x-ray as negative for pneumoconiosis. Employer's Exhibit 5.

[7] Dr. Repsher, a B reader, interpreted claimant's March 28, 2006 x-ray as negative for pneumoconiosis. Employer's Exhibit 2.

[8] Dr. Selby, a B reader, interpreted claimant's September 21, 2006 x-ray as negative for pneumoconiosis. Employer's Exhibit 4.

[9] The administrative law judge admitted Dr. Wiot's negative interpretation of claimant's October 13, 2004 x-ray as employer's rebuttal evidence to an x-ray interpretation referenced in Dr. Majmudar's October 13, 2004 medical report. *See* Decision and Order at 3. In his report, Dr. Majmudar interpreted claimant's October 13, 2004 x-ray as revealing nodular densities "suggestive of possible coal workers' pneumoconiosis." Director's Exhibit 19. Although the administrative law judge did not consider Dr Majmudar's x-ray interpretation, the administrative law judge's error is harmless since Dr. Majmudar, unlike Dr. Wiot, does not possess any special radiological qualifications. *Larioni*, 6 BLR at 1-1278.

[10] Because there is no evidence of complicated pneumoconiosis in the record, the Section 718.304 presumption is inapplicable. *See* 20 C.F.R. §718.304. The Section 718.305 presumption is inapplicable because claimant filed this claim after January 1,

Order at 19.

Section 718.202(a)(4)

A finding of either clinical pneumoconiosis, *see* 20 C.F.R. §718.201(a)(1), or legal pneumoconiosis, *see* 20 C.F.R. §718.201(a)(2),[11] is sufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Clinical Pneumoconiosis

The record contains the new medical opinions of Drs. Majmudar, Simpao, Repsher, and Selby. The administrative law judge permissibly found that the September 3, 2004 x-ray that Dr. Simpao interpreted as positive for pneumoconiosis was interpreted by Dr. Wiot, a better qualified physician, as negative for pneumoconiosis, thus calling into question the reliability of Dr. Simpao's diagnosis of pneumoconiosis. *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 23. The administrative law judge permissibly found that Dr. Majmudar's opinion, that claimant "appeared to have coal worker[s'] pneumoconiosis," was too equivocal to constitute a diagnosis of clinical pneumoconiosis. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); Decision and Order at 23; Director's Exhibit 19. The administrative law judge further found that the opinions of Drs. Repsher and Selby, that claimant did not suffer from clinical coal workers' pneumoconiosis, were consistent with the x-ray evidence and were well-reasoned. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the new medical opinion evidence does not support a finding of clinical pneumoconiosis. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-276 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*).

Legal Pneumoconiosis

In regard to the issue of legal pneumoconiosis, the administrative law judge initially addressed Dr. Majmudar's comments regarding the cause of claimant's obstructive airway impairment. The administrative law judge noted that, although Dr.

1982. *See* 20 C.F.R. §718.305(e). Finally, because this claim is not a survivor's claim, the Section 718.306 presumption is inapplicable. *See* 20 C.F.R. §718.306.

[11] "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).

Majmudar indicated that claimant's obstructive airway impairment was caused by his pneumoconiosis, he subsequently characterized claimant's obstructive airway impairment as being "tobacco related." Decision and Order at 23; Director's Exhibit 19. The administrative law judge permissibly found that Dr. Majmudar's statements were "too indefinite" to support a finding of legal pneumoconiosis. Decision and Order at 23; Director's Exhibit 19. *See Hicks*, 138 F.3d at 528, 21 BLR at 2-326.

The administrative law judge next considered the remaining opinions of Drs. Simpao, Repsher, and Selby. Dr. Simpao interpreted a June 30, 2004 pulmonary function study as revealing a moderate degree of obstructive airway disease. Director's Exhibit 13. Dr. Simpao opined that claimant's chronic lung disease was caused by his coal mine employment. Director's Exhibit 16. Drs. Repsher and Selby opined that claimant did not suffer from any lung disease caused by his coal dust exposure. Employer's Exhibits 2, 4, 6, 7. The administrative law judge accorded less weight to Dr. Simpao's opinion because he found that it was based upon an inaccurate coal mine employment history. However, in this case, Dr. Simpao relied upon a three year coal mine employment history, a history even less than the six years and four months credited by the administrative law judge. As the Director accurately notes, if Dr. Simpao's opinion had been based upon a significantly greater length of coal mine employment than that credited by the administrative law judge, the administrative law judge could have permissibly questioned the credibility of his opinion. *See Worhach v. Director*, 17 BLR 1-105, 1-110 fn.9 (1993); *Crosson v. Director, OWCP*, 6 BLR 1-809 (1984). However, the administrative law judge's coal mine employment finding of six years and four months of coal mine employment does not call into question Dr. Simpao's opinion that an even lesser degree of coal dust exposure contributed to his obstructive airway disease. Thus, the administrative law judge erred in according less weight to Dr. Simpao's opinion because it was based upon an inaccurate coal mine employment history.

We also agree with the Director that the administrative law judge erred in according less weight to Dr. Simpao's opinion because he had "an inaccurate understanding of the definition of legal pneumoconiosis." Decision and Order at 23. A determination as to whether a medical diagnosis satisfies the legal definition of pneumoconiosis pursuant to 20 C.F.R. §718.201 is ultimately a legal determination to be made by the administrative law judge, and not a medical determination. Consequently, it is irrelevant whether Dr. Simpao understood the definition of legal pneumoconiosis. We, therefore, agree with the Director that the administrative law judge has not provided a valid reason for discounting Dr. Simpao's diagnosis of legal pneumoconiosis. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756, 21 BLR 2-587, 2-591 (4th Cir. 1999). We, therefore, vacate the administrative law judge's finding that the new medical opinion evidence does not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

On remand, when reconsidering whether the new medical opinion evidence establishes the existence of legal pneumoconiosis, the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

On remand, should the administrative law judge find that the new medical opinion evidence establishes the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), he must weigh all of the relevant evidence together at 20 C.F.R. §718.202(a), pursuant to *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Total Disability

Section 718.204(b)(2)(i)

The administrative law judge considered the results of four new pulmonary function studies conducted on June 30, 2004, October 13, 2004, March 28, 2006, and September 21, 2006. The June 30, 2004 pulmonary function study produced qualifying values. Director's Exhibit 13. The pulmonary function study conducted on October 13, 2004 produced non-qualifying values, both before and after the administration of bronchodilators. Although the March 28, 2006 pulmonary function study produced qualifying values before the administration of a bronchodilator, it produced non-qualifying post-bronchodilator values. Finally, claimant's September 21, 2006 pulmonary function study produced qualifying values both before and after the administration of bronchodilators. Employer's Exhibit 4.

In considering the pulmonary function study evidence, the administrative law judge found that:

> There are four newly submitted [pulmonary function studies] and one that was conducted with the prior denied claim. The January 12, 1993 study did not produce qualifying values. The June 30, 2004 study yielded qualifying values and was found acceptable by Dr. Burki according to a check mark on a pre-printed form, but Dr. Repsher deposed that the study was invalid due to vocal chord dysfunction, the same problem he found with the [March 28, 2006] study he administered. Based on Dr. Repsher's comments and credentials, I consider this study invalid. The October 13, 2004 study did not produce qualifying values either before or after the administration of a bronchodilator. The March 28, 2006 test produced qualifying values before, but not after, bronchodilation, and Dr. Repsher declared the test technically invalid due to poor effort and cooperation.

> Thus, I discount the results of this study. The final pulmonary function study, taken [on] September 21, 2006, yielded qualifying results both before and after bronchodilation. The test was not invalidated. Although the most recent study is both qualifying and valid, I find that the preponderance of the pulmonary function study evidence fails to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).

Decision and Order at 25.

Because Dr. Repsher invalidated the pulmonary function study that he administered on March 28, 2006 due to claimant's poor effort and cooperation, the administrative law judge permissibly found that this study was not valid. Decision and Order at 25. However, the administrative law judge erred in finding that Dr. Repsher also invalidated the qualifying results of Dr. Simpao's June 30, 2004 pulmonary function study. Dr. Repsher did not address the validity of this study. Consequently, the administrative law judge mischaracterized the pulmonary function study evidence. Inasmuch as the administrative law judge's evidentiary analysis does not coincide with the evidence of record, the administrative law judge erred. *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Moreover, the administrative law judge failed to address all of the new pulmonary function study evidence of record. Specifically, the administrative law judge did not address the results of a qualifying pulmonary function study conducted by Dr. Simpao on May 10, 2004.[12] *See* Director's Exhibit 13. The administrative law judge also did not address the significance of a pulmonary function study conducted by Dr. Simpao on September 20, 2007. Claimant's Exhibit 1. This study, which produced qualifying values, both before and after the administration of a bronchodilator, was admitted into evidence at the September 26, 2007 hearing.[13] *See* Hr. Transcript at 16-17. Because the administrative law judge failed to consider all relevant evidence in the record,[14] 5 U.S.C.

[12] Dr. Burki invalidated the results of claimant's May 10, 2004 pulmonary function study, due to less than optimal effort, cooperation, and comprehension. Director's Exhibit 13. Dr. Repsher also questioned the effort that claimant provided on the May 10, 2004 pulmonary function study. Employer's Exhibit 6 at 18-19.

[13] Employer acknowledges the admission of this evidence into the record. Employer's Brief at 4.

[14] The administrative law judge also did not address the significance of the fact that Dr. Repsher invalidated the results of claimant's September 21, 2006 pulmonary function study, *see* Employer's Exhibit 6 at 18, or that Dr. Selby opined that the

§557(c)(3)(A); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989), we vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b)(2)(i) and remand the case for further consideration.

Section 718.204(b)(2)(ii)

The administrative law judge considered the results of four new arterial blood gas studies conducted on May 10, 2004, October 13, 2004, March 28, 2006, and September 21, 2006. Of these four studies, the administrative law judge noted that the September 21, 2006 study was the only one to produce qualifying values. Decision and Order at 26. Although the administrative law judge recognized that the September 21, 2006 arterial blood gas study was the most recent study of record, he further noted that it was less than six months more recent than the results of claimant's non-qualifying March 28, 2006 arterial blood gas study. The administrative law judge found that the six month difference was not significant enough to merit according greater weight to the more recent study. The administrative law judge, therefore, found that the new arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii).

We note that the administrative law judge did not address claimant's qualifying arterial blood gas study conducted by Dr. Simpao on September 20, 2007. This study was admitted into evidence at the September 26, 2007 hearing.[15] Hr. Transcript at 16-17. Because the administrative law judge failed to consider all relevant evidence in the record, 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165, we vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b)(2)(ii) and remand the case for further consideration.

Section 718.204(b)(2)(iii)

Because there is no evidence of record indicating that the claimant suffers from cor pulmonale with right-sided congestive heart failure, the administrative law judge properly found that claimant is precluded from establishing total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 25.

September 21, 2006 study was "very close to not being valid." Employer's Exhibit 7 at 19.

[15] Employer acknowledges the admission of this evidence into the record. Employer's Brief at 5.

Section 718.204(b)(2)(iv)

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge discredited Dr. Simpao's opinion, that claimant was totally disabled from a respiratory standpoint, because he found that it was based upon an invalidated pulmonary function study and a non-qualifying blood gas study. As discussed, there is no evidence in the record that Dr. Simpao's June 30, 2004 pulmonary function study was invalidated. The administrative law judge also erred in according less weight to Dr. Simpao's opinion because it was based upon a non-qualifying arterial blood gas study. The determination of the significance of a test is a medical assessment for the doctor, rather than the administrative law judge.[16] *See Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). The administrative law judge similarly erred in according less weight to Dr. Majmudar's opinion, that claimant is totally disabled, because the doctor relied upon the results of non-qualifying studies.[17] Decision and Order at 26-27. Consequently, the administrative law judge did not provide a valid reason for discounting the opinions of Drs. Simpao and Majmudar regarding the extent of claimant's pulmonary impairment. In light of the above-referenced errors, we vacate the administrative law judge's finding that the new medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). On remand, when considering whether the new medical opinion evidence establishes total disability pursuant to 20 C.F.R. 718.204(b)(2)(iv), the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses.[18] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

In light of our decision to vacate the administrative law judge's finding that the new evidence did not establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and

[16] Although Dr. Simpao recognized that the May 10, 2004 arterial blood gas study produced non-qualifying values, he interpreted the results as revealing a "ventilatory perfusion mismatch with mild hypoxemia." Director's Exhibit 13.

[17] Dr. Majmudar interpreted claimant's October 13, 2004 pulmonary function study as revealing a "moderate obstructive airway impairment." Director's Exhibit 19.

[18] If, on remand, the administrative law judge finds that the new medical evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii), or (iv), he would be required to weigh all the relevant new evidence together, both like and unlike, to determine whether claimant has established total disability pursuant to 20 C.F.R. §718.204(b). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*. 9 BLR 1-236 (1987)(*en banc*).

total disability pursuant to 20 C.F.R. §718.204(b)(2), we also vacate the administrative law judge's finding pursuant to 20 C.F.R. §725.309. On remand, should the administrative law judge find that the new evidence establishes either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability pursuant to 20 C.F.R. §718.204(b), claimant will have established a change in an applicable condition of entitlement under 20 C.F.R. §725.309. The administrative law judge would then be required to consider claimant's 2004 claim on the merits, based on a weighing of all of the evidence of record, including the evidence that was submitted in connection with claimant's prior claims. *See Shupink v. LTV Steel Corp.*, 17 BLR 1-24 (1992).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge