BRB Nos. 12-0580 BLA
and 12-0580 BLA-A

LUKE LAPOTSKY	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
PAGNOTTI ENTERPRISES, INCORPORATED	)	DATE ISSUED: 07/30/2013
	)	
and	)	
	)	
STATE WORKERS INSURANCE FUND	)	
	)	
Employer/Carrier-Respondents	)	
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 Denying Benefits, on Request for Modification of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Edward K. Dixon and Ryan M. Krescanko (Zimmer Kunz, P.L.C.), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order Denying Benefits, on Request for Modification (2010-BLA-05896) of Administrative Law Judge Adele Higgins Odegard, with respect to a claim filed on February 3, 2003, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(the Act).[1] In a Decision and Order Denying Benefits dated May 16, 2006, Administrative Law Judge Robert D. Kaplan found that claimant failed to establish any element of entitlement. Claimant appealed Judge Kaplan's decision, but upon claimant's motion, the Board dismissed the appeal, and the case was remanded to the district director for consideration of claimant's request for modification. *Lapotsky v. Pagnotti Enterprises, Inc*., BRB No. 06-682 BLA (Dec. 18, 2006 Order) (unpub.).

After the district director denied claimant's request, the case was assigned to Administrative Law Judge Ralph A. Romano. In a Decision and Order dated April 6, 2009, Judge Romano found that claimant established the existence of clinical pneumoconiosis and, thus, established a mistake in a determination of a fact pursuant to 20 C.F.R §725.310, but failed to establish that his pneumoconiosis arose out of coal mine employment or that he was totally disabled. He denied benefits accordingly. On January 4, 2010, claimant again requested modification, which was denied by the district director. Director's Exhibit 136. Claimant contested the district director's findings and requested a formal hearing. The case was assigned to Judge Odegard (the administrative law judge), whose Decision and Order Denying Benefits, on Request for Modification is the subject of this appeal.

Adjudicating this claim pursuant to the regulations contained in 20 C.F.R Part 718, the administrative law judge found that the record supports the parties' stipulation to nine and three-quarter years of coal mine employment. The administrative law judge further found that the evidence submitted with claimant's request for modification was sufficient to establish that claimant's clinical pneumoconiosis arose out of his coal mine employment at 20 C.F.R. §718.203(c). The administrative law judge also determined, therefore, that claimant established a mistake in a determination of a fact pursuant to 20 C.F.R §725.310. The administrative law judge further found, however, that claimant did not establish that he has a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b), and therefore could not prove that he is totally disabled due to

[1] The amendments to the Black Lung Benefits Act do not apply because this claim was filed before January 1, 2005. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119, 260 (2010); Director's Exhibit 2.

pneumoconiosis at 20 C.F.R. §718.204(c).[2] Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge did not provide an adequate rationale in support of her finding that claimant did not establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv) and (c).[3] In response, employer urges the Board to affirm the administrative law judge's denial of benefits. Employer has also filed a cross-appeal, contending that the administrative law judge erred in rejecting Dr. Levinson's x-ray reading in finding the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1) and in finding that claimant's clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c). Claimant has not responded to employer's cross-appeal. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a substantive response to claimant's appeal or employer's cross-appeal unless specifically requested to do so by the Board.[4]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, rational, and in accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

---

[2] The administrative law judge also found, in the alternative, that even if claimant proved that he is totally disabled under 20 C.F.R. §718.204(b), the evidence of record was insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Decision and Order at 24.

[3] Claimant wishes to preserve, for the purpose of further appeal, the issue of whether the administrative law judge erred in discrediting Dr. Kraynak's opinion as to the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

[4] We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings that claimant established nine and three-quarter years of coal mine employment and that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(4) and total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iii). *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 2 n.2, 18.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner's coal mine employment was in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

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 his pneumoconiosis arose out of coal mine employment, that he is totally disabled by a respiratory or pulmonary impairment, and that he is totally disabled by 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 entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Within one year of a denial of benefits, a miner may seek modification based upon a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). An administrative law judge has broad discretion to grant modification based on a mistake of fact, including the ultimate fact of entitlement to benefits. *See Keating v. Director, OWCP*, 71 F.3d 1118, 20 BLR 2-53 (3d Cir. 1995). Mistakes of fact may be demonstrated by wholly new evidence, cumulative evidence, or merely upon further reflection on the evidence of record. *See O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971). In considering whether a change in conditions has been established, an administrative law judge must 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 Kingery v. Hunt Branch Coal Co.*, 19 BLR 1-6, 1-11 (1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992).

I. Claimant's Appeal

Claimant initially contends that the administrative law judge erred in determining that he failed to establish total disability at 20 C.F.R. §718.204(b)(2)(i), (iv). Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the newly submitted pulmonary function studies, dated December 22, 2009 and March 24, 2010, and noted that both studies produced qualifying values prior to the application of bronchodilators and that the March 24, 2010 study produced qualifying values after their application. Decision and Order at 15; Director's Exhibit 127; Employer's Exhibit 2.

With respect to the validity of the December 22, 2009 study, the administrative law judge credited the statement of Dr. Kraynak, the administering physician, that claimant's effort was good and determined that "the test results meet the regulatory standards for reliability and therefore evidence that the [c]laimant's effort was consistent." Decision and Order at 16. Regarding the March 24, 2010 pulmonary function study, the administrative law judge noted Dr. Levinson's statements that claimant's effort was "fair," that claimant gave "less than maximal effort" on the forced vital capacity (FVC) maneuver, but that the test was nevertheless valid. *Id.*; Employer's

Exhibits 2, 5 at 10-11. The administrative law judge also considered that Drs. Prince and Simelaro, "two Board-certified pulmonary physicians,"[6] opined that the March 24, 2010 pulmonary function study was valid, that the tracings were "uniform, consistent, and reproducible" and that the study conformed to Part 718 of the regulations. Decision and Order at 16; Claimant's Exhibits 1, 5. The administrative law judge found that the comments "uniform, consistent, and reproducible" pertained to whether the test met the variability standards of the regulation pursuant to Appendix B to Part 718 at (2)(ii)(G). Decision and Order at 16 n.23. The administrative law judge further determined, however, that "neither physician specifically addressed whether claimant put forth maximum effort, and neither addressed in any way the level of effort that claimant made in the test." *Id.* at 16. The administrative law judge then found that the maximum voluntary ventilation (MVV) values on the March 24, 2010 study were invalid because the degree of variation between the two largest values "exceeded 10%, both pre- and post- bronchodilator." *Id.* Additionally, the administrative law judge stated that the excessive variability in the MVV supported Dr. Levinson's conclusion that claimant did not put forth maximum effort on the test. *Id*.

Based on these findings, the administrative law judge determined that, although the March 24, 2010 pulmonary function study "is not reflective of the claimant's true pulmonary function," it yielded significantly higher values than the December 22, 2009 pulmonary function study, suggesting that the 2009 test is not reflective of claimant's "true pulmonary function" either. Decision and Order at 16-17. The administrative law judge concluded that claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i) because "no physician has provided an explanation of how . . . the disparate results of the two pulmonary function tests . . . can be reconciled" and she could "discern none." *Id*. at 17.

Claimant contends that the administrative law judge's finding is in error, as the pulmonary function studies submitted with his request for modification are qualifying, valid and sufficient to establish total disability. Claimant maintains that the validity of the December 22, 2009 pulmonary function study administered by Dr. Kraynak is unchallenged and that Dr. Levinson's characterization of claimant's effort as fair on the March 24, 2010 study was sufficient to render it conforming. Claimant further argues that the administrative law judge substituted her opinion for that of the medical experts when she determined that the MVV values from the March 24, 2010 pulmonary function study showed excess variability. In support of this argument, claimant cites Dr. Levinson's testimony that the March 24, 2010 pulmonary function study was valid and

[6] Dr. Prince is Board-certified in internal medicine, pulmonary disease and critical care. Claimant's Exhibit 4. Dr. Simelaro is an osteopath who is Board-certified in internal medicine and medical diseases of the chest. Claimant's Exhibit 6.

alleges that the administrative law judge mischaracterized the opinions of Drs. Prince and Simelaro in finding that they did not indicate whether claimant put forth an acceptable level of effort on the study.

Claimant's arguments have merit. The United States Court of Appeals for the Third Circuit has held that, when considering the pulmonary function study evidence, the administrative law judge must determine whether the studies are in substantial compliance with the quality standards. *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987). If a study does not precisely conform to the quality standards, but is in substantial compliance, the administrative law judge must determine whether it constitutes credible evidence of claimant's pulmonary function. *Siwiec*, 894 F.2d at 638, 13 BLR at 2-265. In accomplishing this task, the administrative law judge must rely upon the medical evidence and cannot substitute his or her opinion for that of the medical experts. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987).

In this case, the administrative law judge acted within her discretion as fact-finder in determining that the MVV results from the March 24, 2010 pulmonary function study exceeded the quality standard requiring that the variability between the two largest values be less than ten-percent. *See Schetroma v. Director, OWCP*, 18 BLR 1-19 (1993). However, the administrative law judge improperly relied on her own assessment of the *significance* of the excessive variability on the MVV maneuver when she determined that it confirmed Dr. Levinson's report that claimant exerted less than maximum effort and signified that the March 24, 2010 study was "not reflective of the [c]laimant's true pulmonary function." Decision and Order at 16. In contrast to the administrative law judge's finding, Dr. Levinson determined that the study showed less than maximum effort on the *FVC maneuver* and stated that the study was "statistically valid and consistent with the Part 718 regulations." Employer's Exhibit 5 at 11. Drs. Prince and Simelaro also characterized the March 24, 2010 pulmonary function study as valid and qualifying by checking the box on the Department of Labor's validation form indicating that the "[v]ents are acceptable" and leaving the box labeled "[l]ess than optimal effort, cooperation and comprehension" blank. Claimant's Exhibits 1, 5.

Additionally, there is no support in the quality standards for the administrative law judge's apparent conclusion that optimal effort is required for a pulmonary function study to be valid and entitled to probative weight. The administrative law judge may rely on an administering or reviewing physician's opinion, that the degree of claimant's effort rendered the qualifying results unreliable, to discredit a pulmonary function study, but she cannot reach this conclusion based on her own opinion. *See Schetroma*, 18 BLR at 1-22. Finally, claimant is correct in alleging that, although the administrative law judge acknowledged that the MVV maneuver is not a required part of a pulmonary function

study, she did not render a finding as to whether claimant established total disability at 20 C.F.R. §718.204(b)(2)(i), based on the one-second forced expiratory volume (FEV1), FVC or FEV1/FVC values. Based on claimant's meritorious allegations of error, we vacate the administrative law judge's finding that the pulmonary function study evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) and remand the case to the administrative law judge for reconsideration. Because the administrative law judge's weighing of the pulmonary function studies on remand could affect her credibility determinations with regard to the medical opinions of record, we also vacate the administrative law judge's findings pursuant to 20 C.F.R. §718.204(b)(2)(iv), and (c) and further vacate the denial of benefits.

II. Employer's Cross-Appeal

Employer initially argues that the administrative law judge erred in determining that the preponderance of x-ray evidence was sufficient to establish the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1).[7] Employer also maintains that the administrative law judge did not properly weigh Dr. Levinson's opinion on the issue of the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4).

On modification, the parties submitted four readings of an x-ray dated March 24, 2010. Drs. Smith and Groten, dually qualified as Board-certified radiologists and B readers, read the film as positive for pneumoconiosis. Claimant's Exhibits 2, 9. Dr. Wheeler, a dually qualified radiologist, read the film as negative for pneumoconiosis under the ILO standards, noted the presence of granulomata in the upper lungs consistent with healed histoplasmosis, and stated that the film showed "no [coal workers' pneumoconiosis,] which gives symmetrical small nodular infiltrates in central mid and upper lungs." Employer's Exhibit 3. Dr. Levinson, an A reader, proffered negative readings. Employer's Exhibit 2.

---

[7] Pursuant to 20 C.F.R. §718.201(a)(1), clinical pneumoconiosis is defined as:

> [T]hose 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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

The administrative law judge rationally determined that Dr. Wheeler's negative reading was entitled to less weight than the positive readings by Drs. Smith and Groten, because his attribution of the x-ray abnormalities to healed histoplasmosis or granulomatous diseasewas unsupported by the evidence of record. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97, 22 BLR 2-386, 2-396 (3d Cir. 2002); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-153 (1989) (en banc); Decision and Order at 7. In addition, the administrative law judge permissibly gave "minimal weight" to Dr. Levinson's negative interpretation because he is not a dually qualified reader. *See Chaffin v. Peter Cave Coal Co*., 22 BLR 1-294, 1-302 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); Decision and Order at 7; Employer's Exhibit 2. We affirm, therefore, the administrative law judge's finding that claimant established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), based on the interpretations of Drs. Smith and Groten, as corroborated by the x-ray evidence previously submitted and found positive for pneumoconiosis by Judges Kaplan and Romano. *See Balsavage*, 295 F.3d at 396-97, 22 BLR at 2-396; Decision and Order at 8.

In addition, we reject employer's allegation that the administrative law judge erred in discrediting Dr. Levinson's opinion, that claimant does not have clinical pneumoconiosis, at 20 C.F.R. §718.202(a)(4). The administrative law judge acted within her discretion in finding that Dr. Levinson's opinion was entitled to minimal weight because he relied on his own negative x-ray interpretation, which was "contrary to the overall weight of the x-ray evidence, and did not take other [x]-ray evidence into account." Decision and Order at 12; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc). We are not persuaded by employer's contention that, because Dr. Levinson listed other x-ray evidence in his report, the administrative law judge's latter finding was in error. The administrative law judge's finding is supported by substantial evidence, as Dr. Levinson noted the existence of additional x-ray evidence, but he did not discuss it when setting forth his determination that claimant's x-ray dated March 24, 2010 was negative for pneumoconiosis. Employer's Exhibits 4, 7. We further affirm, therefore, the administrative law judge's finding that, when the evidence is considered as a whole, the positive x-ray interpretations are sufficient to establish the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a).[8] *See Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

[8] Employer also argues that the administrative law judge's clinical pneumoconiosis finding at 20 C.F.R. §718.202(a) is in error because the physicians who read claimant's x-rays as positive for pneumoconiosis did not specifically diagnose "coal workers' pneumoconiosis" or specify that the pneumoconiosis observed on x-ray arose out of coal mine employment. Employer's Brief in Support of Petition for Review/Cross Appeal at 11-12. Employer's contentions pertain to the identification of the source of the clinical pneumoconiosis established by x-ray and are relevant to 20 C.F.R. §718.203(c).

Employer next contends that the administrative law judge erred in finding that claimant established a mistake in a determination of fact in Judge Romano's finding that claimant failed to prove that his pneumoconiosis arose out coal mine employment at 20 C.F.R. §718.203(c). Employer argues that the administrative law judge erred in giving weight to Dr. Kraynak's flawed opinion, based on his status as claimant's treating physician. Employer also contends that the administrative law judge did not consider that the positive x-ray evidence does not include specific findings that claimant has coal workers' pneumoconiosis or that his pneumoconiosis arose out of coal mine employment. Employer further maintains that the administrative law judge failed to make a finding as to the significance of the x-ray readers' reliance on an inaccurate coal mine employment history and erred in crediting as coal mine employment a period during claimant's childhood in which he cracked unprocessed coal in his neighborhood. Lastly, employer asserts that the administrative law judge's determination does not comport with the Administrative Procedure Act (APA), as she did not adequately explain how the relevant evidence supported her finding.[9]

Employer's contentions that the administrative law judge erred in relying on Dr. Kraynak's status as a treating physician and in crediting claimant's dust exposure during his time cracking coal are unsupported by the administrative law judge's actual findings. Although the administrative law judge determined that "Dr. Kraynak would have had the opportunity to form conclusions about whether the [c]laimant's pneumoconiosis was related to his coal mine employment, or came from some other source," she "declin[ed] to give any additional weight to his opinion, based on any status as a treating physician," because his opinion was conclusory. Decision and Order at 13. Regarding the time that claimant spent cracking coal, contrary to employer's argument, the administrative law judge did not credit this period as a part of claimant's coal dust exposure. Rather the administrative law judge determined that claimant's unchallenged nine and three-quarter years of coal mine employment, standing alone, was "a significant factor in his pneumoconiosis." *Id*.

However, employer's remaining allegations of error have merit. In addressing Judge Romano's finding at 20 C.F.R. §718.203(c), the administrative law judge acknowledged Judge Romano's "concern" that some of the physicians who interpreted

---

See Cranor v. Peabody Coal Co., 22 BLR 1-1, 1-5-6 (1999) (en banc). We address these allegations *infra*.

[9] The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record."

claimant's x-rays as positive for pneumoconiosis presumed seventeen years of coal mine employment, rather than the nine and three-quarter years with which Judge Romano credited claimant, but noted, "the overall weight of the [x]-ray evidence has been consistently positive for pneumoconiosis, dating back to 2003." Decision and Order at 13. The administrative law judge then stated, claimant's "credited coal mine employment was a substantial contributing factor to [his] pneumoconiosis. Consequently, I also conclude that the [c]laimant's clinical pneumoconiosis arose from his coal mine employment." *Id*.

We agree with employer that the administrative law judge's finding with respect to the x-ray evidence does not contain an explanation of how the fact that, since 2003, the preponderance of the x-ray evidence has been positive for pneumoconiosis establishes that the pneumoconiosis diagnosed by x-ray arose out of coal mine employment. *See Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We also do not discern an explanation for the administrative law judge's finding that claimant's nine and three-quarter years of coal mine employment are sufficient to prove that his pneumoconiosis arose out of coal mine employment. Because the administrative law judge did not comply with the APA's requirement that she set forth the rationale underlying her findings of fact, we vacate her determinations that claimant met his burden at 20 C.F.R. §718.203(c), and established a mistake in determination of fact at 20 C.F.R. §725.310. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

III. Remand Instructions

The administrative law judge must first reconsider her finding that claimant established a mistake in a determination of fact under 20 C.F.R. §725.310(b) by proving that his pneumoconiosis arose out of his coal mine employment under 20 C.F.R. §718.203(c). The administrative law judge is required to weigh all evidence relevant to the source of the pneumoconiosis diagnosed on x-ray, including the comments that Drs. Wheeler and Levinson recorded on the ILO forms, resolve any conflicts, render her findings in detail, and set forth the underlying rationale, in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

If the administrative law judge again finds that claimant has met his burden at 20 C.F.R. §718.203(c) and, therefore, established a mistake in a determination of fact in the prior denial at 20 C.F.R. §725.310, claimant is entitled to reconsideration of his claim on the merits, based on a weighing of all of the evidence of record, not just the evidence submitted with claimant's request for modification. *See Kovac*, 14 BLR at 1-158. If the administrative law judge finds that claimant has not proven that his pneumoconiosis arose out of coal mine employment, he will have failed to establish an essential element of entitlement, thereby precluding an award of benefits. *See Anderson*, 12 BLR at 1-112.

If the administrative law judge reaches the issue of total disability on the merits, she must reconsider her finding that claimant did not establish the presence of a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(i) or (iv). When addressing the pulmonary function studies submitted on modification, she must apply the evidentiary limitations set forth in 20 C.F.R. §§725.310 and 725.414(a)(2), (3), and restrict the parties to one affirmative case pulmonary function study, one rebuttal pulmonary function study interpretation and (if the opposing party has submitted a rebuttal interpretation) one additional statement from the physician who originally administered the pulmonary function study. In addition, the administrative law judge must determine whether the studies obtained in conjunction with the claim are in substantial compliance with the quality standards and, if so, whether they constitute credible evidence of claimant's pulmonary function.[10] *See Siwiec*, 894 F.2d at 638, 13 BLR at 2-265; *J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008).

To resolve the latter issue, the administrative law judge must rely on the opinions expressed by the medical experts, rather than her own opinion. *See Kertesz*, 788 F.2d at 163, 9 BLR at 2-8; *Marcum*, 11 BLR at 1-24. If the administrative law judge determines that she must resolve a conflict as to whether claimant's effort was sufficient to produce results indicative of his true pulmonary function, she must address all of the evidence relevant to this factor, including direct observations made by medical personnel present at the study, whether a physician or a technician, and the opinion of any physician who assessed claimant's effort by reviewing the results of the study, including the tracings. *See Schetroma*, 18 BLR at 1-22; *Marcum*, 11 BLR at 1-24; *Siegel v. Director, OWCP*, 8 BLR 1-156 (1985); *see also Verdi v. Price River Coal Co.*, 6 BLR 1-1067, 1-1071 (1984) (fair effort can be sufficient to produce a valid pulmonary function study).

The administrative law judge must then reconsider the medical opinions of record at 20 C.F.R. §718.204(b)(2)(iv) in light of her findings at 20 C.F.R. §718.204(b)(2)(i). If the administrative law judge determines that claimant has established total disability on remand, she is required to reconsider whether claimant has established that his total disability is due to pneumoconiosis at 20 C.F.R. §718.204(c). When weighing the medical opinions relevant to the issue of total disability and total disability causation, the administrative law judge must examine the physician's reasoning and determine whether

[10] The administrative law judge may consider the excess variability in the MVV values in determining whether the March 24, 2010 pulmonary function study is in substantial compliance with the quality standards set forth in Appendix B to 20 C.F.R. Part 718. *See Schetroma v. Director, OWCP*, 18 BLR 1-19 (1993). However, the administrative law judge must rely on the opinions of the medical experts as to any interpretation of the studies. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987).

the physician has adequately identified the basis for his or her opinion.[11] *See Soubik v. Director, OWCP*, 366 F.3d 226, 233, 23 BLR 2-85, 2-97 (3d Cir. 2004); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).

Accordingly, the administrative law judge's Decision and Order Denying Benefits, on Request for Modification 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.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge

[11] Claimant suggests that, contrary to the administrative law judge's finding, Dr. Kraynak identified objective test results, claimant's medical history, symptoms of cough and dyspnea, and exertional limitations in support of his diagnosis of a totally disabling impairment. Claimant also maintains that Dr. Kraynak's questioning of the validity of the carboxyhemoglobin level recorded by Dr. Levinson after exercise was corroborated by Dr. Levinson's acknowledgement that the reported result was incorrect. Employer maintains that the administrative law judge erred in determining that Dr. Levinson's opinion, that claimant has no lung disease attributable to coal dust exposure, was conclusory, as Dr. Levinson cited objective test results in support of his conclusion.