BRB Nos. 06-0830 BLA
and 06-0830 BLA-A

JERRY DAVIDSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WHITAKER COAL CORPORATION	)	DATE ISSUED: 06/28/2007
	)	
Employer-Respondent	)	
Cross-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand – Denying Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd and Lloyd), Washington, D.C., for employer.

Michelle S. Gerdano (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy 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 and employer cross-appeals the Decision and Order on Remand–Denying Benefits (03-BLA-5212) of Administrative Law Judge Thomas F. Phalen, Jr., (the administrative law judge), rendered on a subsequent 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).[1] This case has been before the Board previously. In the prior appeal, the Board vacated the administrative law judge's January 29, 2004 Decision and Order, finding that claimant failed to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, based on claimant's failure to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), because the administrative law judge erred in his refusal to apply the evidentiary limitations pursuant to 20 C.F.R. §725.414. The Board therefore remanded the case for further consideration under 20 C.F.R. §725.414, and for the administrative law judge to determine whether "good cause" was established for admitting employer's evidence in excess of the limitations pursuant to 20 C.F.R. §725.456(b)(1). The Board instructed the administrative law judge to then reconsider whether claimant established, based on the new evidence, a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Employer filed a Motion for Reconsideration which the Board granted. The Board instructed the administrative law judge to consider whether claimant's subsequent claim was timely filed pursuant to 20 C.F.R. §725.308. The Board also addressed and rejected employer's arguments that Dr. Barrett's interpretation of the March 24, 2001 x-ray, and Dr. Fino's entire medical report, did not constitute evidence in excess of the evidentiary limitations pursuant to 20 C.F.R. §725.414.

On remand, the administrative law judge found that the claim was timely pursuant to 20 C.F.R. §725.308, and that employer failed to establish "good cause" to admit excess evidence pursuant to 20 C.F.R. §725.456(b)(1), (4). 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), and therefore, did not establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4).[2] Claimant also contends that the Director, Office of Workers'

[1] Claimant's prior claim for benefits, filed on May 26, 1991, was denied on May 29, 1997 because claimant did not establish the existence of pneumoconiosis. Director's Exhibit 1. Claimant filed this claim on February 14, 2001. Director's Exhibit 3.

[2] Because claimant does not challenge the administrative law judge's findings that the existence of pneumoconiosis was not established at 20 C.F.R. §718.202(a)(2), (3), we affirm them. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Compensation Programs (the Director), failed to provide him with a complete and credible pulmonary evaluation to substantiate his claim. Employer responds, urging affirmance of the denial of benefits. The Director responds, contending that he met his obligation to provide claimant with a complete and credible pulmonary evaluation. Employer has filed a cross-appeal, contending that the administrative law judge erred in finding that this claim was timely filed, and in finding that employer did not establish good cause for the admission of excess evidence. The Director responds, urging affirmance of the administrative law judge's findings. Employer has filed a reply brief reiterating its contentions on cross-appeal.

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

We initially address employer's contention, raised on cross-appeal, that the administrative law judge erred in finding claimant's subsequent, current claim is timely pursuant to 20 C.F.R. §725.308. The administrative law judge found that the claim was timely pursuant to the standard enunciated in *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001).[3]

The Act provides that a claim for benefits by, or on behalf of, a miner must be filed within three years of "a medical determination of total disability due to pneumoconiosis. . . ." 30 U.S.C. §932(f). In addition, the implementing regulation requires that the medical determination have "been communicated to the miner or a person responsible for the care of the miner. . . ," and further provides a rebuttable presumption that every claim for benefits is timely filed. 20 C.F.R. §725.308(a), (c). With respect to the time limitation of 20 C.F.R. §725.308, the Sixth Circuit held in *Kirk* that "[t]he three-year limitations clock begins to tick *the first time* that a miner is told by a physician that he is totally disabled by pneumoconiosis. . . ." *Kirk*, 264 F.3d at 608, 22 BLR at 2-298.

Employer relied on the following evidence to attempt rebuttal of the timeliness presumption: Dr. Baker, in a report dated July 21, 1993, diagnosed claimant with occupational lung disease caused by his coal mine employment based upon x-ray, stated that his pulmonary impairment was due to a combination of his dust exposure history and

[3] The record indicates that claimant's coal mine employment occurred in Kentucky. Director's Exhibit 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

smoking history, and recommended that claimant have no further exposure to coal dust. Director's Exhibit 1. Dr. Wicker, in a report dated April 28, 1995, diagnosed moderate pneumoconiosis and moderate osteoarthritis, and responded "no" when asked if claimant was able to perform his past work activity. Director's Exhibit 1. In an August 13, 1996 letter to the Board, claimant noted that Dr. Dineen diagnosed black lung disease based on a lung biopsy, and told him not to return to underground mining. Director's Exhibit 1. At the hearing on May 29, 2003, claimant testified that in 1991 or 1992, Dr. Dineen told him that he was disabled due to breathing problems, and told him not to perform underground mining. Hearing Tr. at 23-24.

The administrative law judge rejected employer's contention that the fact that Dr. Baker's and Dr. Wicker's reports were in the possession of claimant's attorney and in the record established that they were communicated to claimant. The administrative law judge further found that neither claimant's August 1996 letter nor his 2003 testimony established that a physician had communicated to him that he was totally disabled due to pneumoconiosis. Decision and Order on Remand at 3-4.

Employer first contends that the administrative law judge erred in failing to apply the plain language of the statute, which does not require that the medical determination be communicated to the miner. Section 422(f) of the Act, 30 U.S.C. §932(f); Employer's Brief at 8-9; Employer's Reply Brief at 6. Employer contends that if the communication requirement is read to "impose a burden beyond that contemplated by Congress" the regulation is invalid. Employer's Brief at 8. Thus, employer asserts, in order to "save the regulation from invalidity," the communication requirement should be read simply as a question of "notice" to the claimant. *Id*.

Employer's contention is without merit. The Board has long recognized that the statute's implementing regulation, 20 C.F.R. §725.308, contains additional language not found in the statute, including the requirement that the medical determination of total disability due to pneumoconiosis be communicated to the miner. 20 C.F.R. §725.308(a); *Adkins v. Donaldson Coal Co.*, 19 BLR 1-34 (1993). In addition, neither the Board, nor any of the United States Courts of Appeals, has found the communication requirement to be inconsistent with the Act, and employer cites no authority in support of its argument that 20 C.F.R. §725.308 is invalid because it includes a communication requirement. Moreover, both the United States Court of Appeals for the Sixth Circuit, and the Board, have specifically upheld the application of the communication requirement set forth at 20 C.F.R. §725.308. *See Kirk*, 264 F.3d at 607, 22 BLR at 2-296; *Brigance v. Peabody Coal Co.*, 23 BLR 1-170, 1-174-175 (2006)(*en banc*). For all of these reasons, we reject employer's assertion that the administrative law judge erred by failing to apply the plain language of the statute.

Employer next contends that the record establishes that claimant received the requisite communication more than three years before his filing of the current claim. Employer's Brief at 10-12; Employer's Response Brief at 3-7.

Employer specifically contends that the 1993 report of Dr. Baker and the 1995 report of Dr. Wicker diagnosing total disability due to pneumoconiosis constitute communication as they were offered by claimant's attorney and were part of the record in the prior claim and thus, the administrative law judge erred as a matter of law, in his determination to the contrary. We disagree. The Board has held that a medical report must be provided directly to claimant to commence the Act's limitation period. *Daughtery v. Johns Creek Elkhorn Coal Corp.*, 18 BLR 1-96, 1-99 (1999). Thus, contrary to employer's contention, the administrative law judge properly found that the opinions of Drs. Baker and Wicker were insufficient to constitute communication to claimant, as information possessed by claimant's attorney does not constitute communication to claimant. Moreover, as the Director contends, Dr. Wicker's report did not diagnose total disability due to pneumoconiosis, as Dr. Wicker failed to specify whether claimant's disability was due to pneumoconiosis or osteoarthritis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Dr. Wicker's report is therefore insufficient to meet the requirement established in *Kirk*, 264 F.3d at 608, 22 BLR at 2-288, of a medical determination satisfying the statutory definition of total disability due to pneumoconiosis.

Employer also contends that claimant's specific reference to Dr. Dineen's report in his August 13, 1996 letter to the Board, and his May 2003 testimony that he was told in 1991 or 1992 by Dr. Dineen that he was totally disabled, reflect claimant's awareness of the reports, and thus, constitute communication to claimant. We disagree. The administrative law judge rationally found that Dr. Dineen's finding of black lung on lung biopsy and telling claimant not to go back to work in the mines,[4] is insufficient to establish total disability due to pneumoconiosis, and thus, does not constitute a communication from Dr. Dineen to claimant that he was totally disabled due to pneumoconiosis. *Kirk*, 264 F.3d at 608, 22 BLR at 2-288; *Zimmerman v. Director, OWCP*, 871 F.2d 564, 12 BLR 2-254 (6th Cir. 1989). Further, as noted by the Director, although claimant testified that Dr. Dineen told him he was totally disabled due to breathing problems and wrote that Dr. Dineen found black lung on biopsy, claimant

[4] As the administrative law judge noted, claimant also stated in his letter that Dr. Broudy interpreted the lung biopsy as negative for black lung and that Dr. Wicker's x-ray was reread as negative for black lung by Dr. Barrett. Decision and Order on Remand at 4; Director's Exhibit 1.

"never indicated that Dr. Dineen linked the two."[5] Director's Brief at 1. *Rowe*, 710 F.2d at 251, 5 BLR at 2-99. Thus, contrary to employer's contention, the administrative law judge properly found that the facts of this case do not establish that claimant was told that he was totally disabled due to pneumoconiosis more than three years before he filed this claim. Decision and Order on Remand at 3. We therefore affirm the administrative law judge's finding that claimant's claim was timely pursuant to 20 C.F.R. §725.308, as it is supported by substantial evidence.

We next address employer's contention on cross-appeal, that good cause exists for the admittance of Dr. Barrett's interpretation of the March 24, 2001 x-ray and Dr. Fino's complete opinion, in excess of the evidentiary limitations pursuant to 20 C.F.R. §725.414. Employer first contends that the relevancy of a piece of evidence is sufficient to establish good cause for exceeding the evidentiary limitations. The Board has already rejected this argument, and we therefore reject it in this case. *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-58 (2004)(*en banc*).

Employer next contends that the administrative law judge erred in finding that good cause did not exist for the admittance of Dr. Barrett's negative rereading of the March 24, 2001 x-ray. However, we detect no abuse of discretion in the administrative law judge's finding that admittance of Dr. Barrett's rereading was redundant, as employer had designated a negative reading of the same x-ray by Dr. Scott, an equally credentialed reader, as rebuttal x-ray evidence in response to Dr. Baker's positive reading submitted by claimant. *See Dempsey*, 23 BLR at 1-47.

Employer also argues that the administrative law judge erred in finding that good cause was not established for the admission of the entirety of Dr. Fino's report, as the employer designated the report as rebuttal evidence. The administrative law judge found Dr. Fino's report admissible to the extent that Dr. Fino reviewed the pulmonary function study and blood gas study evidence, but found the narrative review of the medical evidence was not admissible. The administrative law judge rejected employer's arguments that Dr. Fino's entire report should be considered because claimant had been pursuing benefits for a long time, and because Dr. Fino had reviewed all the evidence, and was thus in the best position to render an opinion. The administrative law judge found that these arguments were "not compelling" because if employer thought that Dr. Fino was in the best position to render an opinion, it could have designated his report as one of its two affirmative case reports, rather than submitting it as a third report and arguing good cause. Given the facts and arguments presented, we discern no abuse of discretion by the administrative law judge in finding that employer did not establish good

[5] The administrative law judge also noted that unspecified breathing problems are not "synonymous with pneumoconiosis." Decision and Order on Remand at 4.

cause for the admission of the entirety of Dr. Fino's report. *See Dempsey*, 23 BLR at 1-47.

We now address the administrative law judge's determination that the new evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and therefore, did not establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 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, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

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 shall be limited to 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 the existence of pneumoconiosis. Director's Exhibit 1. Consequently, claimant had to submit new evidence establishing the existence of pneumoconiosis to proceed with his claim. 20 C.F.R. §725.309(d)(2), (3).

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered eight readings of four new x-rays. Dr. Baker, a physician with no special radiological qualifications, read the March 24, 2001 x-ray as positive for pneumoconiosis. Director's Exhibit 12. The administrative law judge noted, however, that Dr. Scott, a Board-certified radiologist and B reader, read the same x-ray as negative for pneumoconiosis. Director's Exhibit 15. Based on Dr. Scott's superior qualifications, the administrative law judge found the March 24, 2001 x-ray negative for pneumoconiosis. The administrative law judge also noted that Dr. Alexander, a Board-certified radiologist and B reader, and Dr. Hussain, a physician with no special radiological qualifications, read the April 27, 2001[6] x-ray as positive for pneumoconiosis. Director's Exhibit 14; Claimant's Exhibit 2. The administrative law judge noted,

[6] Dr. Sargent read the April 27, 2001 x-ray for quality purposes only. Director's Exhibit 14.

however, that Dr. Hayes, a Board-certified radiologist and B reader, read the same film as negative. Director's Exhibit 26. The administrative law judge found that the April 27, 2001 x-ray was inconclusive for the existence of pneumoconiosis because, while it was read as positive by Dr. Alexander, a Board-certified radiologist and B reader, it was also read as negative by Dr. Hayes, a Board-certified radiologist and B reader. The administrative law judge noted that Dr. Broudy, a B reader, read the July 25, 2001 x-ray as negative for pneumoconiosis. Director's Exhibit 13. The administrative law judge noted, however, that Dr. Alexander, a Board-certified radiologist and B reader, read the same x-ray as positive for pneumoconiosis. Claimant's Exhibit 2. Based on Dr. Alexander's superior qualifications, the administrative law judge found the July 25, 2001 x-ray positive for pneumoconiosis. Finally, the administrative law judge also noted that Dr. Rosenberg, a B reader, read the March 10, 2003 x-ray as negative for pneumoconiosis. Employer's Exhibit 1. Since there were no contrary readings of this x-ray, the administrative law judge found the x-ray negative for pneumoconiosis. Basing his "determination on reader qualifications," the administrative law judge found that the new x-ray evidence failed to establish the existence of pneumoconiosis. Decision and Order on Remand at 7.

The administrative law judge based his finding on a proper qualitative analysis of the x-ray evidence. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White*, 23 BLR at 1-4-5; *Pate v. Alabama By-Products Corp.*, 6 BLR 1-636 (1983). Consequently, claimant's arguments that the administrative law judge improperly relied on the readers' credentials, and "may have 'selectively analyzed"' the readings, lack merit. Claimant's Brief at 3. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1).

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered four medical opinions. Drs. Baker and Hussain diagnosed pneumoconiosis, while Drs. Broudy and Rosenberg concluded that claimant does not have pneumoconiosis. Director's Exhibits 12-14; Employer's Exhibit 1. The administrative law judge explained that he discounted Dr. Baker's diagnosis of clinical coal workers' pneumoconiosis, because it was based on coal dust exposure history and an x-ray that was reread as negative by a more qualified physician. Decision and Order on Remand at 8. Further, Dr. Baker's diagnosis of chronic bronchitis was based on subjectively reported symptoms. The administrative law judge noted that Dr. Baker based his finding of moderate resting arterial hypoxemia and chronic obstructive pulmonary disease (COPD) on the pulmonary function and blood gas study results, and opined that the pneumoconiosis was due to a combination of smoking and coal mine employment. The administrative law judge, however, also noted that Dr. Baker failed to explain why claimant's condition was not "wholly attributable" to his smoking history, and thus gave Dr. Baker's diagnosis only "some weight." Decision and Order on Remand at 8.

The administrative law judge found Dr. Hussain's opinion only entitled to "some weight" as his diagnosis of clinical pneumoconiosis is merely a restatement of his x-ray interpretation and fails to explain why claimant's legal pneumoconiosis [mild hypoxemia] was not "wholly attributable" to claimant's smoking history. *Id*. at 9. The administrative law judge accorded Dr. Broudy's opinion only "some weight" as the negative x-ray he relied on was read as positive by a more qualified physician and he failed to explain why claimant's COPD is not partially attributable to coal dust exposure. *Id.* By contrast, the administrative law judge found that Dr. Rosenberg provided a better reasoned and documented opinion that claimant did not have clinical or legal pneumoconiosis. He therefore found that Dr. Rosenberg's opinion outweighed those of Drs. Baker, Hussain and Broudy.

Claimant contends that the administrative law judge erred in discounting Dr. Baker's opinion as based on a positive x-ray reading that was "contrary to the [administrative law judge's] findings." Claimant's Brief at 5. Contrary to claimant's contention, the administrative law judge reasonably discounted Dr. Baker's diagnosis of "Coal Workers' Pneumoconiosis, category 1/0," since it was based on Dr. Baker's positive reading of the March 24, 2001 x-ray, which the administrative law judge found outweighed by the negative reading of that x-ray by a physician with superior qualifications, and because the diagnosis was not otherwise explained. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-10 (6th Cir. 2000). Moreover, the administrative law judge went on to consider Dr. Baker's diagnoses of "legal" pneumoconiosis,[7] but acted within his discretion in finding that Dr. Baker did not adequately explain his opinion that claimant's hypoxemia and COPD were related to coal dust exposure. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Trumbo v. Reading Anthracite Co*., 17 BLR 1-85, 1-88-89 and n.4 (1993). Claimant additionally contends that the opinion of Dr. Baker was documented and reasoned and should not have been rejected. Claimant's Brief at 5. Claimant essentially requests a reweighing of the evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Substantial evidence supports the administrative law judge's permissible determination that the opinion of Dr. Baker was not as well-reasoned as Dr. Rosenberg's contrary opinion. Consequently, we affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Claimant further contends that he is entitled to a remand of the case to the district director, for the Director to provide him with a complete and credible pulmonary evaluation. Claimant asserts that because the administrative law judge discredited the

[7] "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).

opinion of Dr. Hussain on the ground that he relied upon an "erroneous x-ray interpretation" and "did not explain why the claimant's impairment was not wholly attributable to his smoking history," Dr. Hussain's opinion is not sufficient to fulfill the Director's duty to provide claimant an opportunity to substantiate his claim. Claimant's Brief at 6. The Director responds that "because Dr. Hussain's opinion was found to be at least minimally credible but outweighed by contrary evidence, there is no reason to remand the case for a new pulmonary evaluation." Director's Brief at 2.

The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406. The issue of whether the Director has met this duty may arise where "the administrative law judge finds a medical opinion incomplete," or where "the administrative law judge finds that the opinion, although complete, lacks credibility." *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994); *accord Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 1166, 7 BLR 2-25, 2-31 (8th Cir. 1984).

The record reflects that Dr. Hussain conducted an examination and the full range of testing required by the regulations, and addressed each element of entitlement on the Department of Labor examination form. 20 C.F.R. §§718.101(a), 718.104, 725.406(a); Director's Exhibit 14. Dr. Hussain diagnosed "Pneumoconiosis" and found the etiology of the diagnosis was "Dust exposure." Director's Exhibit 14. Dr. Hussain found clinical pneumoconiosis based on a positive x-ray reading. The administrative law judge found that the opinion did not constitute a reasoned opinion, as it was merely a restatement of Dr. Hussain's x-ray interpretation, which the administrative law judge had found outweighed. *See Williams*, 338 F.3d at 514, 22 BLR at 2-649. Additionally, the administrative law judge chose to give greater weight to the better reasoned and better documented opinion of Dr. Rosenberg that claimant does not suffer from pneumoconiosis. *Id*; *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999)(explaining that "[administrative law judges] may evaluate the relative merits of conflicting physicians' opinions and choose to credit one . . . over the other"); Decision and Order on Remand at 11. Because the administrative law judge merely found Dr. Hussain's opinion outweighed on the issue of the existence of pneumoconiosis, there is no merit to claimant's argument that the Director failed to fulfill his statutory obligation to provide claimant with a complete and credible pulmonary evaluation. *Cf. Hodges*, 18 BLR at 1-93.

As the administrative law judge properly found that the new evidence fails to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), claimant has failed to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). We therefore affirm the administrative law judge's denial of benefits.

Accordingly the administrative law judge's Decision and Order on Remand – Denying benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge