BRB No. 04-0972 BLA

LLOYD SATTERFIELD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MIDWEST COAL COMPANY / AMAX COAL COMPANY	)	
	)	
	)	DATE ISSUED: 09/23/2005
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 of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Sarah M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Scott A. White (White & Risse, L.L.P.), St. Louis, Missouri, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (03-BLA-0127) of Administrative Law Judge Robert L. Hillyard denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as

amended, 30 U.S.C. §901 *et seq*. (the Act).[1] This case involves a duplicate claim filed on May 23, 2000.[2] After crediting claimant with fifteen years of coal mine employment, the administrative law judge found that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge, however, found that the newly submitted evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). The administrative law judge, therefore, found that the evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). In his consideration of the merits of claimant's 2000 claim, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence was insufficient to establish that the miner's 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 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) and (a)(4). Claimant also argues that the administrative law judge erred in finding the evidence insufficient to establish that his total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response

[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]The relevant procedural history of the instant case is as follows: Claimant initially filed a claim for benefits on May 28, 1980. Director's Exhibit 37. The district director denied benefits on September 18, 1980 and December 12, 1984. *Id.* At claimant's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. *Id.* However, by Order of Dismissal dated January 7, 1987, Judge Campbell dismissed claimant's claim with prejudice. *Id.* By Order dated January 8, 1987, Judge Campbell denied the application of the Director, Office of Workers' Compensation Programs (the Director), for a stay of the Order of Dismissal. *Id.* There is no indication that claimant took any further action in regard to his 1980 claim.

Claimant filed a second claim on May 23, 2000. Director's Exhibit 1.

brief. In a reply brief, claimant reiterates his previous contentions of error.[3]

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

We first address employer's contention that the evidence is insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).[4] The district director denied claimant's previous 1980 claim because claimant failed to establish any of the elements of entitlement. Director's Exhibit 37. In *Peabody Coal Co. v. Spese*, 117 F.3d 1001, 21 BLR 2-113 (7th Cir. 1997), the United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, held that if a denial of benefits was based upon both a failure to show pneumoconiosis and a failure to show total disability, a claimant can avoid automatic denial of his claim on *res judicata* grounds by showing a material change in either of those elements. *See also Sahara Coal Co. v. Director, OWCP [McNew]*, 946 F.2d 554, 15 BLR 2-227 (7th Cir. 1991). Consequently, in order to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000), the newly submitted evidence must support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) or a finding of total disability pursuant to 20 C.F.R. §718.204(b).

In this case, the administrative law judge found that the newly submitted evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Since no party challenges this finding, it is affirmed. *Skrack v.*

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[3]Because no party challenges the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and (a)(3), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In a motion filed on June 29, 2005, the Director requests that the Board reform the caption by removing Rag American Coal Company and Horizon Natural Resources as respondents. The Director notes that Midwest Coal Company does not challenge its status as the responsible operator. Neither claimant nor employer has responded to the Director's motion. We, therefore, grant the Director's motion and reform the caption by deleting Rag American Coal Company and Horizon Natural Resources.

[4]Although Section 725.309 has been revised, these revisions apply only to claims filed after January 19, 2001.

Island Creek Coal Co., 6 BLR 1-710 (1983). Consequently, we also affirm the administrative law judge's finding that the evidence is sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). *See* Decision and Order at 41.

Claimant contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The newly submitted x-ray evidence consists of fifty-six interpretations of nine different x-rays. In his consideration of the newly submitted x-ray evidence, 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 Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 26-27. Because a majority of the best qualified physicians interpreted claimant's January 30, 2001 x-ray as positive for pneumoconiosis, the administrative law judge found that this x-ray was positive for pneumoconiosis. Decision and Order at 26. However, because a majority of the best qualified readers interpreted claimant's September 7, 1999, July 12, 1999 and June 27, 2000 x-rays as negative for pneumoconiosis, the administrative law judge found that these x-rays were negative for pneumoconiosis. *Id.* at 26-27. The administrative law judge also found that claimant's November 22, 1994, September 22, 1997, June 27, 1999, April 22, 2002 and March 3, 2003 x-rays were uniformly interpreted as negative for pneumoconiosis, albeit by physicians with no special radiological qualifications. *Id.* The administrative law judge, therefore, found that:

> Taken as a whole, eight of the nine newly submitted record x-rays are negative for pneumoconiosis. The record contains 33 negative readings and 23 positive readings. The record reflects similar physician qualifications between the negative and positive readings. The preponderance of the evidence does not support a finding of pneumoconiosis. I find that the existence of pneumoconiosis has not been established pursuant to 20 C.F.R. §718.202(a)(1).

Decision and Order at 27.

Claimant contends that the administrative law judge erred in using "numerical superiority to resolve the conflicting x-ray evidence." Claimant's Brief at 4. We disagree. The administrative law judge did not mechanically count

x-ray readings, but rather considered the qualifications of the physicians who interpreted each of the nine x-rays.[5]

Claimant also contends that the administrative law judge erred in finding that the x-ray interpretations rendered by Drs. Mathis and Powers are negative for pneumoconiosis. Claimant notes that these physicians did not comment upon the presence or absence of pneumoconiosis. However, the Board has held that an x-ray interpretation that does not mention pneumoconiosis will, in appropriate circumstances, support an inference that a miner does not suffer from pneumoconiosis. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216 (1984). It is a question of fact for the administrative law judge to resolve. *Id.* The administrative law judge permissibly treated Dr. Mathis' interpretations of claimant's November 22, 1994, April 21, 2002 and March 3, 2003 x-rays[6] and Dr. Powers' interpretations of claimant's September 22, 1997 and June 27, 1999 x-rays[7] as negative for pneumoconiosis.[8]

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[5]In *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994), the United States Court of Appeals for the Seventh Circuit acknowledged that: "When as is normal in these cases the same x-ray is read by a number of different physicians, who note their interpretations but do not give reasons, the balance of opinions is entitled to some though not controlling weight." The Seventh Circuit noted that it was "difficult to see what alternative [an] administrative law judge would have." *Id.*

[6]Dr. Mathis interpreted claimant's November 22, 1994 x-ray as being "within normal limits." New Employer's Exhibit 13. Dr. Mathis interpreted claimant's April 21, 2002 and March 3, 2003 x-rays as revealing no active infiltrates or consolidates. *Id.*

[7]In his interpretation of claimant's September 22, 1997 x-ray, Dr. Powers noted that claimant's lungs were "somewhat hyperexpanded," suggesting chronic obstructive pulmonary disease. New Employer's Exhibit 13. However, Dr. Powers further noted that claimant's lung fields were "clear of acute infiltrate." *Id.* In his interpretation of claimant's July 12, 1999 x-ray, Dr. Powers noted that there had been interval resolution of the small patchy nonspecific right intra-hilar infiltrate. *Id.* Dr. Powers further noted that there was no localized acute infiltrate. *Id.*

[8]Claimant accurately notes that the radiological credentials of Drs. Mathis and Powers are not found in the record. However, in this case, the administrative law judge accurately acknowledged that there was no evidence that Drs. Mathis and Powers possessed any special radiological qualifications. Consequently, given their "lack of listed specialty credentials," the administrative law judge

Claimant next argues that the administrative law judge, in weighing the conflicting interpretations of claimant's January 30, 2001 x-ray, improperly considered the interpretations rendered by physicians qualified as only B readers. Although five dually qualified physicians interpreted claimant's January 30, 2001 x-ray as positive for pneumoconiosis, the administrative law judge noted that five equally qualified physicians interpreted the film as negative for pneumoconiosis. Decision and Order at 26. The administrative law judge noted that the record contained three additional interpretations of this x-ray that were rendered by physicians qualified as B readers only. Because two of the three B readers interpreted claimant's January 30, 2001 x-ray as negative for pneumoconiosis, the administrative law judge found that this film was negative for pneumoconiosis. The administrative law judge's finding that claimant's January 30, 2001 x-ray was negative for pneumoconiosis is supported by substantial evidence.

Claimant next contends that the administrative law judge should have questioned the negative interpretations of claimant's January 30, 2001, April 22, 2002 and March 3, 2003 x-rays in light of his finding that claimant's January 27, 2000 x-ray was positive for pneumoconiosis. We disagree. In this case, the administrative law judge permissibly considered both the quality and the quantity of the x-ray evidence in finding it insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Claimant also contends that the administrative law judge committed numerous errors in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). In this case, the administrative law judge conducted an extensive review and discussion of the medical opinion evidence. After finding that Dr. Murthy, claimant's treating physician, did not diagnose pneumoconiosis, the administrative law judge discredited the opinions of Drs. Carandang and Houser that claimant suffered from pneumoconiosis. The administrative law judge further stated that:

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accorded only "some weight" to their respective x-ray interpretations. *See* Decision and Order at 26-27.

> Taken as a whole, Drs. Selby, Rosenberg, Tuteur, and Renn, all possessing superior credentials, provide well-reasoned opinions, based on objective medical evidence, that the Claimant does not suffer from pneumoconiosis as defined in §718.201. This finding is supported by the opinion of Dr. Repsher (who based his opinion on limited objective data) and by six negative CT scan interpretations by Board-Certified Radiologists and B readers. These opinions are also consistent with hospitalization records showing chronic bronchitis, emphysema, and asthma. The opinion of Dr. Cohen, while well reasoned, is outweighed by the other opinions of record. Accordingly, I find that the Claimant has not established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(4).

Decision and Order at 35.

Claimant argues that the administrative law judge erred in finding Dr. Carandang's opinion insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[9] Claimant argues that the administrative

[9]Dr. Carandang examined claimant on June 27, 2000. In a report dated August 22, 2000, Dr. Carandang diagnosed coal workers' pneumoconiosis based upon claimant's coal dust exposure and the results of an x-ray. Director's Exhibit 10. Dr. Carandang also diagnosed chronic obstructive pulmonary disease. *Id.* Dr. Carandang found that a majority of claimant's symptoms were due to his coal mining employment and, to a lesser degree, his cigarette smoking. *Id.*

In a letter dated November 1, 2000, Dr. Carandang stated that his diagnosis of pneumoconiosis was not based exclusively on an x-ray interpretation. Dr. Carandang explained that his diagnosis was based upon all of the test results that he had. Director's Exhibit 16. Dr. Carandang further stated:

> [Claimant's] pulmonary function test was below disability standards, showing him to have severe obstructive disease. His B-Reader report that I have does show pneumoconiosis. While you say your B-Reader reports both show negative, that fact does not change my medical opinion.
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> [Claimant] does have a smoking history of 38 years, but has not smoked in 21 years. As you are aware, pneumoconiosis is a progressive disease which may not manifest itself for many years. He had symptoms of recurrent bronchitis and SOB for about 10 years now, which I believe to be symptoms of his progressive pneumoconiosis.

law judge "faulted [Dr. Carandang's opinion] only because he used the [Department of Labor] standard form to report his opinion." Claimant's Brief at 13. Claimant argues that Dr. Carandang's diagnosis of pneumoconiosis is supported by the results of his examination, objective tests and a chest x-ray. *Id.* Claimant also contends that Dr. Carandang, as a consulting physician with the Department of Labor, is "specially qualified" to render an opinion as to the existence of pneumoconiosis. *Id.*

The administrative law judge properly discredited Dr. Carandang's opinion because the doctor failed to provide any reasoning or rationale for his conclusion that claimant suffered from pneumoconiosis, or for attributing claimant's pulmonary impairments to his coal dust exposure. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Although Dr. Carandang performed a physical examination, took an x-ray and recorded the results of objective tests, the administrative law judge properly found that Dr. Carandang failed to explain how the results of these tests supported his conclusions. Decision and Order at 33. Contrary to claimant's contention, the administrative law judge did not discredit Dr. Carandang's opinion because he used a Department of Labor reporting form. Moreover, the administrative law judge did not err in not according greater weight to Dr. Carandang's opinion based upon his status as a Department of Labor consulting physician. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*). The administrative law judge permissibly found that Dr. Carandang's opinion was insufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Claimant next argues that the administrative law judge erred in finding Dr. Houser's opinion insufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Dr. Houser examined claimant on February 26, 2002. In a report dated February 26, 2002, Dr. Houser diagnosed, *inter alia*, coal workers' pneumoconiosis and chronic obstructive pulmonary disease.[10] Director's Exhibit 43. Dr. Houser indicated that he believed that claimant's chronic

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> It is still my reasonable medical opinion that [claimant] has clinical, historical pneumoconiosis.

Director's Exhibit 16.

[10]Dr. Houser noted that Dr. Whitehead, a B reader, rendered a positive interpretation of claimant's July 12, 1999 x-ray. Director's Exhibit 43. Dr. Houser also noted that a September 7, 1999 x-ray was also reviewed and showed "similar findings." *Id.*

obstructive pulmonary disease was "related to his former cigarette smoking and also to former coal mine employment." *Id*.

In a subsequent letter dated May 30, 2002, Dr. Houser opined that claimant's coal workers' pneumoconiosis was "related to each and every exposure to coal and rock dust he experienced during his approximate 18 years of coal mine employment." Director's Exhibit 43. Dr. Houser further stated that:

> In terms of etiology, I believe his chronic obstructive pulmonary disease is related to former cigarette smoking as well as exposure to rock dust arising from his coal mine employment. I believe the factors causing his pulmonary disability are the chronic obstructive pulmonary disease and coal workers' pneumoconiosis. Exposure to coal and rock dust is the cause of his coal workers' pneumoconiosis and also substantially contributed to causing his chronic obstructive pulmonary disease.

Director's Exhibit 43.[11]

The administrative law judge properly discredited the diagnosis of coal workers' pneumoconiosis rendered by Dr. Houser because the administrative law judge found that it was merely a restatement of an x-ray opinion. *See Cornett v. Benham Coal Co.*, 277 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); Decision and Order at 33. The administrative law judge also permissibly found that Dr. Houser failed to adequately explain his basis for concluding that claimant's chronic obstructive pulmonary disease was substantially related to his coal dust exposure. *Clark*, *supra*; *Lucostic*, *supra*. Consequently, the administrative law judge permissibly found that Dr. Houser's opinion was insufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Claimant argues that the administrative law judge erred in crediting the opinions of Drs. Selby, Rosenberg, Tuteur, and Renn that claimant does not suffer from pneumoconiosis. Claimant argues that the administrative law judge misinterpreted the evidence in stating that Dr. Selby relied upon normal

[11]Dr. Houser also submitted letters to Dr. Murthy. In these letters dated July 31, 2002, October 30, 2002, April 1, 2003 and July 1, 2003, Dr. Houser diagnosed chronic obstructive pulmonary disease and coal workers' pneumoconiosis. *See* New Employer's Exhibit 10. Dr. Houser provided no bases for these diagnoses.

pulmonary function study results.[12] Claimant's Brief at 9. Dr. Selby interpreted claimant's pulmonary function study results as consistent with "asthma and its incomplete treatment." New Employer's Exhibit 12 at 19. Dr. Selby also provided a detailed explanation for concluding that claimant does not suffer from pneumoconiosis or any other pulmonary disease attributable to his coal dust exposure. *Id*. at 20-24. Consequently, the administrative law judge's error, if any, in charactering the results of claimant's January 30, 2001 pulmonary function study is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Claimant argues that the administrative law judge erred in stating that Dr. Rosenberg supported his explanation with reference to medical studies. Claimant's Brief at 11. We disagree. As the administrative law judge found, Dr. Rosenberg supported his findings with reference to medical studies. *See* Employer's Exhibit 17 at 12-13 (documenting Dr. Rosenberg's citations to (1) Dr. Morgan's 1974 study from the archives of *Environmental Health*; (2) an article published by Drs. Hatfield and Hodus; and (3) a 1986 article by Drs. Souter and Hurley).

Claimant also argues that Dr. Rosenberg's view is "contrary to specific authority that provides that occupational exposure causes clinically significant degrees of impairment." Claimant's Brief at 10. Claimant further contends that the opinions of Drs. Tuteur and Renn are "at odds with the Act and regulations." Claimant's Brief at 12. We disagree. Because Drs. Rosenberg,[13] Tuteur[14] and

[12]Dr. Selby conducted a pulmonary function study on January 30, 2001. Although Dr. Selby interpreted the results as revealing "moderate to severe obstruction," he noted that claimant's post-bronchodilator results revealed a "significant improvement." Director's Exhibit 36; *see also* New Employer's Exhibit 12 at 19.

[13]Dr. Rosenberg acknowledged that the inhalation of coal mine dust could result in obstructive lung disease. Employer's Exhibit 17 at 60. However, in claimant's case, Dr. Rosenberg opined that the evidence did not warrant a finding that claimant's coal dust exposure made any significant contribution to his chronic obstructive pulmonary disease. *Id.* at 68-69. Dr. Rosenberg diagnosed asthma based on the fact that claimant had a reversible component to his airflow obstruction. *Id.* at 23-24.

[14]Dr. Tuteur acknowledged that coal mine dust can cause obstruction. Employer's Exhibit 16 at 35. Dr. Tuteur, in fact, acknowledged that claimant had sufficient exposure to coal mine dust to produce chronic obstructive pulmonary disease. *Id.* at 35-36 . However, Dr. Tuteur explained that:

Renn[15] did not assume that coal dust exposure can never cause an obstructive lung disease, the administrative law judge could properly rely upon their opinions. *See generally Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995).

Claimant's remaining statements regarding the opinions of Drs. Rosenberg, Tuteur and Renn amount to no more than a request to reweigh the evidence of record. Such a request is beyond the Board's scope of review. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

Claimant next argues that the administrative law judge erred in his consideration of Dr. Repsher's opinion. Dr. Repsher, a physician Board-certified in Internal Medicine and Pulmonary Disease, reviewed the results of claimant's June 27, 2000 pulmonary function study. Although Dr. Repsher opined that the prebronchodilator values did not reflect claimant's true pulmonary function (because of a failure to take a full inspiration), he opined that the postbronchodilator values probably did reflect "at least close to his true pulmonary function." Director's Exhibit 24. Dr. Repsher further stated that the pulmonary function tests did not document nor did they even suggest that claimant was

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> [B]y smoking two packs of cigarettes a day [claimant] had about a 20 percent risk of developing [chronic obstructive pulmonary disease due to his cigarette smoking], and I can say by virtue of his exposure to coal mine dust independent of cigarette smoking [claimant] had about a one or a -- less than one and probably somewhere around a third of a percent risk. That's a 60 fold difference. On that basis, I can say with reasonable medical certainty that in [claimant] his phenotype of chronic obstructive pulmonary disease is due to the chronic inhalation of tobacco smoke at the rate of two packages per day, and not the inhalation of coal mine dust.

Employer's Exhibit 16 at 36.

[15]Dr. Renn acknowledged that coal dust exposure can cause obstruction. Employer's Exhibit 14 at 26-27. Dr. Renn explained that claimant suffered from bronchoreversible airway obstruction, a condition not caused by pneumoconiosis. *Id.* at 27. Dr. Renn further explained that he did not see, in claimant's case, the findings that he would expect to see if claimant's lung disease was induced by his coal dust exposure. *See* Employer's Exhibit 14 at 30-31.

suffering from coal workers' pneumoconiosis. *Id.*

The administrative law judge noted that Dr. Repsher opined that the data from claimant's June 27, 2000 pulmonary function study was not supportive of a finding of pneumoconiosis. Decision and Order at 30. Although the administrative law judge noted that Dr. Repsher possessed "superior credentials," he acknowledged that his entire opinion was supported by one pulmonary function study. *Id.* The administrative law judge, therefore, afforded Dr. Repsher's opinion only "some weight against a finding of pneumoconiosis." *Id.*

Claimant contends that the administrative law judge erred in his consideration of Dr. Repsher's opinion because pulmonary function studies are not diagnostic of the existence of pneumoconiosis. Pulmonary function and arterial blood gas studies are not generally considered to be diagnostic of the presence or absence of pneumoconiosis. *See generally Morgan v. Bethlehem Steel Corp.*, 7 BLR 1-226 (1984); *Lambert v. Itmann Coal Co.*, 6 BLR 1-256 (1983); *see also Piniansky v. Director, OWCP*, 7 BLR 1-171 (1984). Thus, an administrative law judge may not generally rely upon pulmonary function study results to determine whether or not a miner suffers from pneumoconiosis. However, in this case, the administrative law judge did not independently evaluate the results of claimant's pulmonary function study. He relied upon the opinion of Dr. Repsher, a Board-certified pulmonologist, that the pulmonary function study results were not supportive of a finding of pneumoconiosis. Moreover, although the administrative law judge accorded Dr. Repsher's opinion "some weight," he found that this evidence was somewhat less probative because it was based on "limited objective data." Decision and Order at 35. We, therefore, reject claimant's contention that the administrative law judge erred in his consideration of Dr. Repsher's opinion.

Claimant also contends that the administrative law judge erred in not considering Dr. Murthy's diagnosis of coal workers' pneumoconiosis. In his Decision and Order, the administrative law judge stated:

> Dr. Murthy, who was the Claimant's treating physician and who presents no medical specialty credentials, submitted treatment records for the Miner dated 2001 through 2003 (NEX 11). The records reflect consistent symptoms of shortness of breath, physical examinations showing occasional wheezing, and a consistent diagnosis of bronchitis and emphysema due to cigarette smoking. Dr. Murthy did not diagnose pneumoconiosis or COPD due to coal dust exposure in any of the records.

Decision and Order at 15.

Claimant, however, accurately notes that Dr. Murthy also submitted medical reports in connection with claimant's previous 1980 claim.[16] Having found the evidence sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000), the administrative law judge was required to consider claimant's 2000 claim on the merits based on a weighing of all of the evidence of record. *See Shupink v. LTV Steel Corp.*, 17 BLR 1-24 (1992). Consequently, the administrative law judge erred in not considering Dr. Murthy's 1984 reports along with all of the other relevant evidence submitted in connection with claimant's 1980 claim. However, under the facts of this case, we hold that the administrative law judge's failure to consider Dr. Murthy's 1984 reports constitutes harmless error. *See Larioni*, *supra*. The administrative law judge considered Dr. Murthy's treatment records from 2001 through 2003. The administrative law judge accurately noted that Dr. Murthy did not diagnose pneumoconiosis or chronic obstructive pulmonary disease due to coal dust exposure in any of these records.[17] Decision and Order at 15; New Employer's Exhibit 11. Moreover, the administrative law judge properly found that Dr. Murthy does not possess any medical specialty credentials. *Id.*

Claimant also argues that the administrative law judge erred in his consideration of the CT scan evidence. In finding that the medical opinion evidence was insufficient to establish the existence of pneumoconiosis, the administrative law judge found that the opinions of Drs. Selby, Rosenberg, Tuteur and Renn, that claimant did not suffer from pneumoconiosis, were supported by six negative CT scan interpretations rendered by Board-certified radiologists and B readers.

Claimant argues that the administrative law judge erred in relying upon the results of the CT scan interpretations without first addressing whether the

[16]In a report dated July 3, 1984, Dr. Murthy diagnosed "Simple Coal Workers Pneumoconiosis based on the history of exposure to coal dust for a period of 15 years and on the history of coughing up of black phlegm." Director's Exhibit 37 (DX-20). In a report dated September 14, 1984, Dr. Murthy diagnosed chronic bronchitis due to coal dust exposure. Director's Exhibit 37 (DX 27). Dr. Murthy also again diagnosed "simple coal workers pneumoconiosis based on the history of exposure to coal dust for a period of 15 years and on the history of coughing up of black phlegm." *Id.*

[17]In his treatment notes, Dr. Murthy's diagnoses include emphysema, chronic bronchitis, and chronic obstructive pulmonary disease. In a treatment note dated June 17, 2003, Dr. Murthy diagnosed emphysema and chronic bronchitis attributable to claimant's previous smoking history. *Id.*

physicians rendering the interpretations were sufficiently qualified to do so. The Seventh Circuit has noted that the Department of Labor has not issued any guidelines for administrative law judges to follow when assessing the reliability of a physician's interpretation of a CT scan. *See Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 22 BLR 2-409 (7th Cir. 2002). The Seventh Circuit has further noted that, in the absence of controlling statutory language or guidance from the agency, it would defer to well-reasoned and well-documented decisions rendered by administrative law judges resolving the issues before them. *Id.*

In this case, the administrative law judge noted that a CT scan must be measured and weighed based upon the radiological qualifications of the reviewing physicians. Decision and Order at 29. The administrative law judge noted that the physicians who interpreted the CT scans were qualified as Board-certified radiologists and B readers. *Id.* at 35. The administrative law judge accurately noted that six dually qualified physicians, Drs. Wiot, Shipley, Spitz, Wheeler, Scott and Meyer, interpreted claimant's January 30, 2001 CT scan as negative for pneumoconiosis. Decision and Order at 29-31, 35. The administrative law judge permissibly relied upon the CT scan evidence to support a finding that claimant did not suffer from pneumoconiosis.

Moreover, in crediting the opinions of Drs. Selby, Rosenberg, Tuteur and Renn that claimant does not suffer from pneumoconiosis, the administrative law judge noted that these physicians possess "superior credentials." Decision and Order at 35. The administrative law judge found that their opinions are well reasoned and based upon the objective medical evidence. *Id.* The administrative law judge further found that their opinions were supported by Dr. Repsher's review of a pulmonary function study and by the fact that six dually qualified physicians interpreted claimant's January 30, 2001 CT scan as negative for pneumoconiosis. *Id.* Although the administrative law judge found that Dr. Cohen's contrary opinion was also well reasoned,[18] he found that it was outweighed by the opinions of Drs. Selby, Rosenberg, Tuteur and Renn. *Id.* Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of the our affirmance of the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*

[18]As discussed, *infra*, the administrative law judge properly discredited the opinions of Drs. Carandang and Houser.

v. Director, OWCP, 11 BLR 1-26 (1987); *Gee v. W. G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we need not address claimant's contentions regarding the administrative law judge's finding that the evidence is insufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *See Larioni, supra*.

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