**U.S. Department of Labor**

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 25-0040 BLA

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| CLYDE DAMRON | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
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| LEVISA COAL, INCORPORATED | ) | |
| | ) | **NOT-PUBLISHED** |
| and | ) | |
| | ) | |
| TRAVELERS INSURANCE COMPANY | ) | |
| | ) | DATE ISSUED: 03/04/2026 |
| Employer/Carrier-Petitioners | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Daniel G. Murdock (Fulton, Devlin & Powers, LLC), Lexington, Kentucky, for Employer and its Carrier.

David Casserly (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Stephen D. Bell's[1] Decision and Order Awarding Benefits (2020-BLA-06056) rendered on a subsequent claim filed on May 11, 2017,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Employer is the properly designated responsible operator. He found Claimant established 19.25 years of coal mine employment. He further found Claimant established complicated pneumoconiosis and thus invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309. Further, he found the disease arose out of coal mine employment. 20 C.F.R. §718.203(b). Thus, he awarded benefits.

On appeal, Employer argues the ALJ erred in designating it the responsible operator. On the merits of entitlement, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant responds in support of the award of

[1] The Office of Administrative Law Judges (OALJ) initially assigned this case to ALJ Larry S. Merck, and he conducted a telephonic formal hearing on July 25, 2023. Hearing Transcript at 4. Subsequently, he retired, and OALJ reassigned the case to ALJ Bell (the ALJ). Decision and Order at 3.

[2] Claimant filed a prior claim for benefits on May 9, 2002. Director's Exhibit 1. The district director denied it as abandoned. *Id.* A denial by reason of abandonment is "deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c).

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he 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(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). As Claimant's prior claim was denied by reason of abandonment, Claimant was required to submit new evidence establishing at least one element to obtain review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's arguments concerning its designation as the responsible operator.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

**Responsible Operator**

The responsible operator is the potentially liable operator that most recently employed the miner for at least one year.[5] 20 C.F.R. §§725.494(c), 725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director properly identifies a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator financially capable of assuming liability more recently employed the miner for at least one year. *See* 20 C.F.R. §725.495(c).

An operator will be deemed capable of assuming liability for benefits if one of three conditions is met: 1) the operator is covered by a policy or contract of insurance in an amount sufficient to secure its liability;[6] 2) the operator was authorized to self-insure

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989); Director's Exhibit 4; Hearing Transcript at 36.

[5] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[6] Insurance coverage for black lung benefits exists only if the insurance policy is in effect on the last day of the miner's exposure to coal dust while employed by the insured. 20 C.F.R. §726.203(a).

during the period in which the miner was last employed by the operator, provided that the operator still qualifies as a self-insurer or the security given by the operator pursuant to 20 C.F.R. §726.104(b) is sufficient to secure the payment of benefits; or 3) the operator possesses sufficient assets to secure the payment of benefits awarded under the Act. 20 C.F.R. §725.494(e)(1)-(3).

The ALJ found Employer is a potentially liable operator and that it failed to establish it is financially incapable of assuming liability for benefits or that another operator more recently employed Claimant for at least one year. Decision and Order at 20-22. Thus he designated it the responsible operator. *Id.*

Employer argues the ALJ erroneously excluded evidence relevant to its alleged financial incapability of assuming benefits. Employer's Brief at 8-11. Further, it argues he erred in weighing the evidence when finding it did not rebut the presumption it is financially capable of assuming liability.[7] *Id.*

**Evidentiary Issue**

As noted above, this matter was initially before ALJ Merck. In a September 29, 2022 Order, he admitted liability evidence Employer proffered in Employer's Exhibits 8-11 over the Director's objection. Sept. 29, 2022 Order at 11-13. This included a September 14, 2020 questionnaire completed by Employer's owner, Kenneth Rowe, contained in Employer's Exhibit 8. *Id.* Although Employer did not timely submit this evidence to the district director, ALJ Merck found Employer established extraordinary circumstances warranting admission as Mr. Rowe did not respond to the district director or other parties until after the Proposed Decision and Order issued on May 7, 2020.[8] *Id.* Thus ALJ Merck admitted Employer's Exhibits 8-11.

[7] We affirm, as unchallenged, the ALJ's finding that Employer did not establish another potentially liable operator more recently employed Claimant for at least one year. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20-22.

[8] Because the district director must finally resolve identification of the responsible operator or carrier before a case is referred to the OALJ, the regulations require that absent extraordinary circumstances, all liability evidence must be submitted to the district director. 20 C.F.R. §§725.407(d), 725.414(d), 725.456(b)(1); 65 Fed. Reg. 79,920, 79,989 (Dec. 20, 2000). Thus, "no documentary evidence pertaining to liability may be admitted in any further proceeding . . . unless it is submitted to the district director . . . ." 20 C.F.R. §725.414(d). If documentary evidence pertaining to the identification of a responsible

ALJ Merck also found an insurance policy issued by Traveler's Insurance Company (Travelers) did not cover this claim, 20 C.F.R. §725.494(e)(1), and there is no basis in the record to conclude Levisa Coal, Incorporated, (Levisa Coal) is authorized to self-insure, 20 C.F.R. §725.494(e)(2). Sept. 29, 2022 Order at 14-17. Thus he determined the remaining issue is whether Levisa Coal or its owner, Kenneth Rowe, "possess[es] sufficient assets to secure the payment of benefits in the event the claim is awarded," 20 C.F.R. §725.494(e)(3). *Id.* at 17. Rather than address this issue, he remanded the case to the district director for further consideration. *Id.* Pursuant to the Director's motion for reconsideration, ALJ Merck set the matter for hearing to determine whether Levisa Coal or its owner, Kenneth Rowe, possesses sufficient assets to secure the payment of benefits. Order Denying Director's Motion for Reconsideration.

At the July 25, 2023 hearing before ALJ Merck, Employer offered additional liability evidence in the form of a second questionnaire Kenneth Rowe completed on March 18, 2023, which it labeled Employer's Exhibit 12. Hearing Transcript at 11-14. The Director objected. *Id.* ALJ Merck instructed the parties to address its admissibility in their closing briefs. *Id.* Employer, in its closing brief, argued the same extraordinary circumstances for admitting Mr. Rowe's initial September 14, 2020 questionnaire contained in Employer's Exhibit 8 also justify admitting Employer's Exhibit 12 – Kenneth Rowe, initially, was not responsive to the September 14, 2020 questionnaire. Employer's Brief Before ALJ at 8-9.

Before reaching either the outstanding evidentiary issue or the remaining liability issue, ALJ Merck retired, and OALJ transferred the case to ALJ Bell. In his Decision and Order Awarding Benefits, the subject of the current appeal, the ALJ excluded Employer's Exhibit 12. He found Employer's good cause arguments unpersuasive as Employer did not cite any specific difficulties explaining the more than two-year gap between Mr. Rowe's September 14, 2020 and March 18, 2023 questionnaire responses in Employer's Exhibits 8 and 12, respectively. Decision and Order at 21-22.

Employer argues the ALJ abused his discretion in excluding Employer's Exhibit 12. Employer's Brief at 8-11. We disagree.

ALJs exercise broad discretion in resolving procedural and evidentiary matters. *Dempsey v. Sewell Coal Corp*., 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-153 (1989) (en banc). A party seeking to overturn the disposition of an evidentiary issue must establish the ALJ's action was an abuse of discretion. *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

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operator or carrier is not submitted to the district director, it "shall not be admitted into the hearing record in the absence of extraordinary circumstances." 20 C.F.R. §725.456(b)(1).

In admitting the September 14, 2020 questionnaire, ALJ Merck cited specific instances demonstrating that either the district director or another party had reached out, unsuccessfully, to Kenneth Rowe before he ultimately completed the form, albeit after the district director issued a Proposed Decision and Order.[9] Sept. 29, 2022 Order at 13. The ALJ found that, in contrast, Employer does not cite any specific difficulties that account for the "more than two-year gap between Mr. Rowe completing Employer's first questionnaire on September 14, 2020 and the second questionnaire on March 18, 2023," and generally "asserts that Mr. Rowe is not easy to contact." Decision and Order at 22 (internal quotations omitted). Employer does not allege in this appeal that it made specific attempts to reach Kenneth Rowe. The ALJ permissibly found Employer's general allegation that Mr. Rowe is not "easy to contact," Decision and Order at 21-22, is an insufficient basis to establish extraordinary circumstances. *Doss v. Director, OWCP*, 53 F.3d 654, 658 (4th Cir. 1995); *Blake*, 24 BLR at 1-113; *Clark*, 12 BLR at 1-153; 20 C.F.R. §725.456(b)(1); 62 Fed. Reg. 3338, 3362 (Jan. 22, 1997) (A potentially liable operator that neglects to undertake the timely development of evidence while the case is pending before the district director may not take advantage of the 'extraordinary circumstances' exception.).

We also reject Employer's argument that the ALJ was required to admit Employer's Exhibit 12 because Kenneth Rowe has been accepted as a liability witness in this case. The regulation set forth at 20 C.F.R. §725.414(c) provides:

> [A]ll parties must notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the designated responsible operator. Absent such notice, the testimony of a witness relevant to the liability of a potentially liable operator or the designated responsible operator will not be admitted in any hearing conducted with respect to the claim unless the [ALJ] finds that the lack of notice should be excused due to extraordinary circumstances.

20 C.F.R. §725.414(c). The record does not reflect that Employer identified Kenneth Rowe as a liability witness before the district director, nor does Employer allege it did so. In asserting that ALJ Merck accepted Mr. Rowe as a liability witness in his September 29,

[9] A letter from the district director "dated October 2, 2018 states that '[i]n regards to the coal companies [Employer] and Taylor Tots Products I have sent out letters to the owners requesting financial records from them.'" Sept. 29, 2022 Order at 13 (quoting Director Exhibit 62). In addition, representatives from Robert Coal stated "there has been no indication that the officers of [Employer] have been investigated in regard to their financial capabilities to assume liability." Sept. 29, 2022 Order at 13 (quoting Director's Exhibit 61).

2022 Order, Employer mischaracterizes the record. Employer's Brief at 9-10. Contrary to Employer's assertion, ALJ Merck's September 29, 2022 Order neither addressed nor accepted Mr. Rowe as a hearing witness in this case.

We thus affirm the ALJ's decision to exclude Employer's Exhibit 12 from the record.

**ALJ's Finding**

In finding that Employer failed to establish Levisa Coal does not possess sufficient assets to secure the payment of benefits, the ALJ weighed Claimant's testimony. Decision and Order at 22. He found Claimant's testimony unpersuasive because Claimant repeatedly testified he had little knowledge of Levisa Coal's business operations. *Id.*

Employer argues the ALJ erred in discrediting Claimant's testimony. Employer's Brief at 10-11. We disagree.

The ALJ evaluates the credibility and weight of the evidence, including witness testimony. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *Clark*, 12 BLR at 1-155; *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989). The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc).

As the ALJ observed, Claimant repeatedly testified he had little knowledge of Levisa Coal's business dealings and was unaware of what happened to its assets after it went bankrupt. Decision and Order at 22; Hearing Transcript at 24, 26, 35-36. Claimant testified that he was a thirty-one percent owner of the company, that Don Roger Rowe was also a thirty-one percent owner, and that Kenneth Rowe was a thirty-four percent owner. Director's Exhibit 89 at 36. Claimant explained he was in charge of the underground mining operations, Don Rogers was in charge of maintenance, and Kenneth Rowe was responsible for the business paperwork. *Id.* When asked about the company's bankruptcy and whether there was bankruptcy paperwork, Claimant testified, "I don't know exactly what happened, because I don't, like I said, I don't know anything about the business end of this deal." *Id.* at 35-36. He added that Kenneth Rowe ran "the business part of it, took care of all the paperwork, all the insurance[], all of the stuff." *Id.* at 36. Moreover, when testifying about Levisa Coal's equipment being auctioned off, he stated, "[w]e owed the banks quite a bit of money on a couple pieces of equipment, so what happened with all that stuff, I have no idea." *Id.*

The ALJ thus permissibly found Claimant's testimony unpersuasive because Claimant lacked adequate knowledge of the business to state if Levisa Coal possesses

sufficient assets to secure the payment of benefits under 20 C.F.R. §725.494(e)(3). *Rowe*, 710 F.2d at 255; 20 C.F.R. §725.495(c); Decision and Order at 22.

Employer argues Claimant "would not need to have detailed knowledge of the business end of the company to know" if the company had adequate assets to secure the payment of benefits. Employer's Brief at 11. Thus it argues the ALJ should have credited Claimant's testimony. But this argument lacks merit as it is simply a request to reweigh the evidence. *Rowe*, 710 F.2d at 255; *Stallard*, 876 F.3d at 670; *Tackett*, 12 BLR at 1-14.

We additionally reject Employer's contention that the ALJ should have dismissed Travelers as a party to the case. Employer's Brief at 7-8. Although Employer correctly notes Judge Merck, in his September 29, 2022 Order, found Travelers not liable for benefits because it did not insure Levisa Coal on Claimant's last date of employment, and that the ALJ did not rely on coverage in finding Levisa Coal financially capable of paying benefits, it does not follow that the ALJ should have dismissed Travelers as a party to the case.[10] *Id.* An ALJ is not authorized to dismiss an operator or carrier from the claim except upon the motion or written agreement of the Director. 20 C.F.R. §725.465(b). Further, as a carrier that steps into the shoes of an employer is required to discharge the statutory and regulatory duties imposed on the employer, *see Tazco, Inc. v. Director, OWCP* [*Osborne*], 895 F.2d 949, 951 (4th Cir. 1990), it follows that the designated responsible carrier must remain a party until there is a final entitlement determination. *See, e.g., Crabtree v. Bethlehem Steel Corp.*, 7 BLR 1-354, 1-356 (1984).

As Employer raises no other argument, we affirm the ALJ's conclusion that Employer is the responsible operator in this case. 20 C.F.R. §725.495(a)(1).

**Invocation of the Section 411(c)(3) Presumption**

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by chest x-ray, yields one or more large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be

[10] We reject, as a mischaracterization of the record, Employer's implication that Judge Merck's September 29, 2022 Order dismissed Travelers from the case and that this dismissal remains "law of the case." Employer's Brief at 8. Contrary to Employer's assertion, although Judge Merck found Travelers "not responsible for the payment of any benefits that may be awarded," he explicitly denied Employer's motion to dismiss "Levisa Coal Inc., as insured by Travelers Insurance," as the responsible operator. Sept. 29, 2022 Order at 16-17.

expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co*., 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis, while the computed tomography (CT) scan evidence and medical opinion evidence are inconclusive and neither support nor refute a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a), (c); Decision and Order at 10-17. Weighing the evidence together, he found Claimant established complicated pneumoconiosis by a preponderance of the evidence. Decision and Order at 17.

Employer contends the ALJ erred in finding the medical opinion evidence inconclusive as to the existence of complicated pneumoconiosis and in consideration of the evidence as a whole.[11] 20 C.F.R. §718.304(c); Employer's Brief at 11-16. We are not persuaded.

The ALJ weighed the medical opinions of Drs. Nader, Fino, and Adcock. Decision and Order at 14-17; Director's Exhibits 12, 18; Employer's Exhibits 5, 7. He found Dr. Nader diagnosed complicated pneumoconiosis and his opinion is reasoned and documented. Decision and Order at 14. He found Dr. Adcock excluded complicated pneumoconiosis and his opinion is also reasoned and documented. *Id.* at 16. He found Dr. Fino was equivocal on whether Claimant has complicated pneumoconiosis, and thus his opinion is not credible. *Id.* at 15. Moreover, he found Dr. Fino's opinion is not credible because he relied on an x-ray that neither party designated as evidence. *Id.* Based on the foregoing, he found the medical opinion evidence is inconclusive and does not undermine the x-ray evidence that supports complicated pneumoconiosis. *Id.* at 16-17.

Initially, we reject Employer's assertion that the ALJ failed to provide a valid reason for discounting Dr. Fino's opinion. Employer's Brief at 15. Employer does not challenge the ALJ's finding that Dr. Fino's opinion is not credible because he relied on an x-ray reading that neither party designated. Decision and Order at 15-16. Thus we affirm this finding. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Moreover, as Employer concedes Dr. Fino equivocated as to whether Claimant does or does not have complicated pneumoconiosis, the ALJ permissibly discounted his opinion on the issue. *See Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 882 (6th Cir. 2000) (ALJ may discredit

[11] We affirm as unchallenged the ALJ's findings that the x-ray evidence supports a finding of complicated pneumoconiosis while the CT scan evidence is inconclusive on the issue. *See Skrack*, 6 BLR at 1-711; Decision and Order at 10-12.

an equivocal opinion); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988) (same); Decision and Order at 15-16; Employer's Brief at 12-13, 15 (citing Employer's Exhibit 5 at 8).

Employer next contends the ALJ should have discredited Dr. Nader's opinion because the doctor merely restated a positive x-ray. Employer's Brief at 15. We disagree. The ALJ recognized that, in addition to a positive chest x-ray, Dr. Nader relied on "Claimant's [twenty-four] years of exposure to coal and rock dust as well as his history of chronic cough, wheezing, shortness of breath, and mucus expectoration [to] support[] his diagnosis" of complicated pneumoconiosis. Decision and Order at 14. Further, the ALJ noted, "[i]n his supplemental report, Dr. Nader added that the [Department of Labor's] initial finding of only twelve years of coal mine employment did not change his opinion." *Id.* Contrary to Employer's argument, the ALJ permissibly credited Dr. Nader's opinion because it is "consistent with the evidence he reviewed and Claimant's symptoms . . . ." Decision and Order at 14; *see Rowe*, 710 F.2d at 255; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1992); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

Finally, we conclude Employer's argument that the ALJ should have credited Dr. Adcock's opinion as most probative amounts to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). Because Employer raises no further challenge to the ALJ's weighing of the medical opinion evidence, we affirm his findings that the medical opinions are inconclusive of complicated pneumoconiosis at 20 C.F.R. §718.304(c) and that the evidence as a whole establishes complicated pneumoconiosis. *See Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304; Decision and Order at 14-17. We thus affirm the ALJ's conclusion that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and therefore established a change in an applicable condition of entitlement. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c)(3); Decision and Order at 17. We further affirm as unchallenged the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Skrack*, 6 BLR at 1-711; Decision and Order at 20.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge