

BRB No. 07-0802 BLA

C.L. (Deceased)¹)
)
 Claimant-Petitioner)
)
 v.)
)
 BELLAIRE CORPORATION) DATE ISSUED: 06/27/2008
)
 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 – Denial of Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Timothy F. Cogan (Cassidy, Myers, Cogan & Voegelin, L.C.), Wheeling, West Virginia, for claimant.

John C. Artz (Ogletree, Deakins, Nash, Smoak & Stewart, P.C.), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (04-BLA-5406) of Administrative Law Judge Thomas M. Burke rendered 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). Claimant’s prior application for benefits,

¹ The record reflects that claimant passed away on January 6, 2007, while his claim was pending before the administrative law judge. Claimant’s widow is pursuing his appeal.

filed on January 30, 1990, was finally denied on May 22, 1992, because claimant failed to establish that his totally disabling respiratory impairment was due to pneumoconiosis. Director's Exhibit 1. On April 26, 2002, claimant filed his current application which is considered a "subsequent claim for benefits" because it was filed more than one year after the final denial of a previous claim. 20 C.F.R. §725.309(d); Director's Exhibit 3.

In a Decision and Order dated June 1, 2007, the administrative law judge credited claimant with seventeen and three-quarter years of coal mine employment² and initially found that, consistent with the prior findings, the medical evidence developed since the prior denial of benefits established the existence of simple pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). The administrative law judge further found, however, that the newly developed evidence did not establish the existence of complicated pneumoconiosis, and thus failed to invoke the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. The administrative law judge also found that the newly developed evidence did not establish that claimant's totally disabling respiratory impairment was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). The administrative law judge therefore determined that claimant did not establish a change in the 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 complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Claimant further asserts that the administrative law judge erred in his evaluation of the medical opinion evidence relevant to the issue of total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Employer responds in support of the administrative law judge's denial of benefits. Claimant filed a reply brief reiterating the above allegations of error. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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).

² The record indicates that claimant's coal mine employment occurred in Ohio. Director's Exhibit 5. 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*).

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 a finding of 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). The “applicable conditions of entitlement” are “those conditions upon which the prior denial was based.” 20 C.F.R. §725.309(d)(2). Claimant’s prior claim was denied because he failed to establish that his totally disabling respiratory impairment was due to pneumoconiosis. Director’s Exhibit 1. Consequently, claimant had to submit new evidence establishing this element of entitlement to obtain review of the merits of his claim. 20 C.F.R. §725.309(d)(2), (3).

Under Section 411(c)(3) of the Act, 30 U.S.C. §923(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if (A) an x-ray of the miner’s lungs shows an opacity greater than one centimeter that would be classified as Category A, B, or C; (B) a biopsy or autopsy shows massive lesions in the lung; or (C) when diagnosed by other means, the condition could reasonably be expected to reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304.

In evaluating the evidence relevant to the existence of complicated pneumoconiosis, the administrative law judge initially found, correctly, that all of the x-ray evidence was negative for the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). Decision and Order at 13. Considering the biopsy evidence pursuant to 20 C.F.R. §718.304(b), the administrative law judge found that, while Dr. Green diagnosed progressive massive fibrosis (PMF), which equates to a diagnosis of massive lesions, the biopsy evidence as a whole did not establish the existence of complicated pneumoconiosis, as neither Dr. Yousef nor Dr. Oesterling diagnosed the existence of the disease based on the biopsy evidence. Decision and Order at 13. The administrative law judge then found, pursuant to 20 C.F.R. §718.304(c), that since three of the four computerized tomography (CT) scan interpretations were negative for the existence of complicated pneumoconiosis, including those by the most highly qualified readers, the weight of the CT scan evidence did not support the existence of the disease. Decision and Order at 14. Weighing all of the relevant evidence together under the standard set forth by the United States Court of Appeals for the Sixth Circuit in *Gray v. SLC Coal Co.*, 176 F.3d 382, 398-90, 21 BLR 2-615, 2-629 (6th Cir. 1999), the

administrative law judge concluded that claimant failed to establish the existence of complicated pneumoconiosis by a preponderance of the evidence. Decision and Order at 14.

Claimant initially contends that the administrative law judge erred in his evaluation of the x-ray evidence pursuant to 20 C.F.R. §718.304(a). Specifically, claimant asserts that the administrative law judge should have discredited the negative interpretations provided by Drs. Wiot and Meyer because these physicians did not diagnose simple pneumoconiosis, in contrast to the administrative law judge's finding that claimant established the existence of simple pneumoconiosis at 20 C.F.R. §718.202(a)(1). Claimant's Brief at 18-19. Claimant's contention is without merit.

Pursuant to 20 C.F.R. §718.304(a), the administrative law judge noted, correctly, that the record contains six readings of four x-rays. A July 10, 2002 x-ray was read as positive for simple pneumoconiosis, but negative for large opacities of complicated pneumoconiosis by Dr. Noble, a Board-certified radiologist and B reader. Director's Exhibit 15. The July 10, 2002 x-ray was read as completely negative for small or large opacities by Dr. Wiot, who is also a Board-certified radiologist and B reader. Employer's Exhibit 1. An x-ray dated December 10, 2002 was read as completely negative for small or large opacities by Drs. Wiot and Meyer, both Board-certified radiologists and B readers. Director's Exhibit 25; Employer's Exhibit 1. Finally, x-rays dated February 13, 2006 and April 21, 2006 were read as positive for small opacities of simple pneumoconiosis, but negative for large opacities of complicated pneumoconiosis, by Dr. Ahmed, who is also a Board-certified radiologist and B reader.³ Claimant's Exhibits 5, 7. Thus, the administrative law judge concluded, correctly, that the x-ray interpretations were uniformly negative for the existence of large opacities and therefore did not establish the existence of complicated pneumoconiosis. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 509, 22 BLR 2-625, 2-640 (6th Cir. 2003); *Gray*, 176 F.3d at 388, 21 BLR at 2-626; *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th

³ Dr. Ahmed interpreted both the February 13, 2006 and April 21, 2006 x-rays as positive for pneumoconiosis, 2/1 s/t, and noted that a 2.3 centimeter mass in the right upper lung "could" represent complicated pneumoconiosis. Claimant's Exhibits 5, 7. In addition, Dr. Ahmed noted that both x-rays revealed "coalescence of small pneumoconiotic opacities." Claimant's Exhibits 5, 7. However, Dr. Ahmed formally classified both x-rays as Category "O," indicating the absence of large opacities. The administrative law judge correctly found that Dr. Ahmed's readings did not support the presence of complicated pneumoconiosis. In order for x-ray evidence to constitute evidence of complicated pneumoconiosis, there must be a diagnosis of one or more large opacities (greater than one centimeter) classified as Category A, B, or C. 20 C.F.R. §718.304(a). To the extent that claimant relies on this evidence, his reliance is misplaced.

Cir. 1993); Decision and Order at 13. Consequently, claimant has failed to establish any prejudice in the administrative law judge's determination to credit the negative readings by Drs. Wiot and Meyer.

Claimant next challenges the administrative law judge's evaluation of the biopsy evidence on the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b). Claimant contends that the administrative law judge erred in failing to accord greater weight to Dr. Green's diagnosis of complicated pneumoconiosis, than to the contrary opinion of Dr. Oesterling. Specifically, claimant asserts that Dr. Green's credentials exceed those of Dr. Oesterling, and that Dr. Oesterling's opinion is not reasoned and documented.

Pursuant to 20 C.F.R. §718.304(b), the administrative law judge initially found that the record contains opinions from three Board-certified pathologists who interpreted slides prepared from a February 20, 2003 biopsy. Decision and Order at 7, 12, 13. The administrative law judge properly noted that Dr. Yousef, who performed the initial microscopic and macroscopic evaluation of the lung specimens, identified the presence of two benign anthracotic lymph nodes, two benign lymph nodes with fibrosis and anthracosilicosis, and pleural thickening and subpleural coalescent anthracosilicotic nodules with calcification in the right upper lobe. Decision and Order at 8, 12; Director's Exhibit 29. Dr. Yousef stated that the "coalescent firm anthracotic nodules involv[ed] an area measuring approximately 5 x 1.5 cm." Director's Exhibit 29. The administrative law judge also considered Dr. Green's December 20, 2004 report, in which the physician reviewed Dr. Yousef's report, together with the pathology slides, and opined that the biopsy evidence "shows conclusive evidence of progressive massive fibrosis with a nodule in the right upper lung measuring 5 x 1.5 cm." Decision and Order at 8-9, 12; Claimant's Exhibit 1. Finally, the administrative law judge considered that in a report dated October 18, 2005, Dr. Oesterling disagreed with Dr. Green, stating that the confluent fibrosis seen on the biopsy was largely due to reactive pleural fibrotic response, or surface fibrosis, and was not the typical interstitial fibrosis associated with PMF. Decision and Order at 9, 12; Employer's Exhibit 6. Dr. Oesterling further explained that the type of biopsy performed was "relatively superficial" because it was intended to rule out the presence of malignancy, and it therefore "preclude[d] an accurate diagnosis of progressive massive fibrosis." Employer's Exhibit 6. Dr. Oesterling stated that before accepting any diagnosis of PMF, a CT scan image should be obtained to determine the extent of the fibrotic response within the lung parenchyma. Employer's Exhibit 6.

On December 14, 2005, claimant underwent the suggested CT scan. Dr. Oesterling reviewed the CT scan results and stated, in a supplemental report dated December 21, 2005, that it was quite evident that claimant did not have progressive massive fibrosis. Employer's Exhibit 6. Dr. Green also reviewed the CT scan, and in a supplemental report dated January 19, 2006, opined that the radiographic findings did not

change the opinions expressed in his earlier report, but supported his diagnosis that claimant has PMF. Claimant's Exhibit 3. Dr. Green explained that "[t]his is an unusual case in that the PMF lesion is unilateral and there is not good evidence of a generalized background of simple pneumoconiosis." Claimant's Exhibit 3. Dr. Green therefore recommended that the CT scan "be reviewed by a radiologist or B reader experienced with the pneumoconioses to determine if there is evidence of simple [coal workers' pneumoconiosis]." Claimant's Exhibit 3.

After reviewing this evidence pursuant to 20 C.F.R. §718.304(b), the administrative law judge concluded that, although "Dr. Green is a most qualified pathologist," the preponderance of the evidence did not support his diagnosis. Decision and Order at 13. Specifically, the administrative law judge found that since Dr. Yousef identified the presence of subpleural coalescent anthracosilicotic nodules but made no mention of complicated pneumoconiosis or progressive massive fibrosis, Dr. Oesterling specifically opined that claimant did not have progressive massive fibrosis, and only Dr. Green diagnosed the existence of PMF, the biopsy evidence, "taken as a whole," was not sufficient to meet claimant's burden of proving the existence of complicated pneumoconiosis by a preponderance of the evidence. Decision and Order at 13.

There is no merit to claimant's assertion Dr. Oesterling did not review the actual biopsy slides, and that, therefore, his opinion should have been accorded diminished weight by the administrative law judge. Claimant's Brief at 27-28. The evaluation of the medical evidence is a matter within with the discretion of the administrative law judge. *See Williams*, 338 F.3d at 514, 22 BLR at 2-649; *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge considered claimant's contention that Dr. Oesterling had merely reviewed photocopies of the biopsy slides, but found, within his discretion, that nothing in Dr. Oesterling's report indicated that he had not reviewed the actual biopsy slides. Decision and Order at 9. Rather, the administrative law judge permissibly concluded that Dr. Oesterling used the photocopies of the slides in his report simply to better illustrate his conclusions. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 9 n.15; Employer's Exhibit 6.

There is also no merit to claimant's contention that Dr. Oesterling did not consider the possible effects of coal dust on the lung parenchyma. Claimant's Brief at 28. The record reflects that Dr. Oesterling specifically described the appearance of both the lung pleura and parenchyma, and explained why the tissue he examined supported his conclusion that claimant did not have PMF. Employer's Exhibit 6. We further reject claimant's assertion that the administrative law judge did not compare the credentials of the pathologists. Claimant's Brief at 20. The administrative law judge specifically noted

that Drs. Yousef, Green, and Oesterling are all Board-certified pathologists. Decision and Order at 13. Specifically, the record reflects that both Dr. Green and Dr. Oesterling are Board-certified in anatomical and clinical pathology. In addition, while Dr. Green may have additional academic achievements to his credit, and the administrative law judge specifically considered that Dr. Green is “a most qualified pathologist,” whether to accord his opinion additional weight on this basis was a matter within the discretion of the administrative law judge. See *Martin*, 400 F.3d at 307, 23 BLR at 2-286; *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc recon.*); *Clark*, 12 BLR at 1-154; *DeFore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1988); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). Substantial evidence supports the administrative law judge’s permissible finding that although Dr. Green is highly qualified, his opinion was not borne out by the biopsy evidence as a whole. We therefore affirm, as supported by substantial evidence, the administrative law judge’s finding that the biopsy evidence, taken as a whole, did not support the presence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b). See *Martin*, 400 F.3d at 305, 23 BLR at 2-283.

Claimant also challenges the administrative law judge’s evaluation of the CT scan readings pursuant to 20 C.F.R. §718.304(c). The administrative law judge properly found that, in addition to the reviews of the December 14, 2005 CT scan that were conducted by Drs. Green and Oesterling in connection with their pathology reports, the same CT scan was also read by Drs. Wiot and Ahmed,⁴ who are both Board-certified radiologists and B readers, and whose reports were submitted by the parties pursuant to 20 C.F.R. §718.107(a). Decision and Order at 9-10, 14. Contrary to claimant’s contention, the administrative law judge properly considered Dr. Ahmed’s comment that the CT scan revealed a nodular mass-like density in the right upper chest, which he opined could be granuloma and post inflammatory scarring, could be a malignancy, and “could even represent complicated pneumoconiosis A.” Decision and Order at 9; Claimant’s Brief at 17; Claimant’s Exhibit 4. The administrative law judge also considered Dr. Wiot’s opinion that the density in the right upper lobe was a manifestation of post-operative change. However, the administrative law judge permissibly found that, as neither Dr. Ahmed nor Dr. Wiot diagnosed the presence of complicated pneumoconiosis or progressive massive fibrosis, the CT scan evidence, when considered as a whole, did not support invocation of the irrebuttable presumption pursuant to 20 C.F.R. §718.304(c). We, therefore, affirm the administrative law judge’s finding as supported by substantial evidence. See *Martin*, 400 F.3d at 305, 23 BLR at 2-283.

⁴ The heading of Dr. Ahmed’s report mistakenly indicates that the computerized tomography (CT) scan was performed on February 13, 2006, which is actually the date of an x-ray also read by Dr. Ahmed. Claimant’s Exhibits 4, 7. However, the body of Dr. Ahmed’s CT scan report confirms that he was discussing the results of the CT scan performed on December 14, 2005. Claimant’s Exhibit 4.

Claimant further contends that in weighing all of the relevant evidence together, the administrative law judge erred in failing to conclude that such factors as (1) the evidence of fibrosis and coalescence seen on the x-rays, CT scans, and biopsy; (2) Dr. Altmeyer's pulmonary function study results showing a severe reduction in claimant's diffusing capacity; and (3) the progression of claimant's lung disease over time, all supported Dr. Green's diagnosis of PMF. Claimant's Brief at 16-18, 25-27. We disagree. Claimant requests a reweighing of the evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. In concluding that claimant failed to establish the existence of complicated pneumoconiosis, the administrative law judge considered all of the evidence of record, including Dr. Altmeyer's test results and the evidence of fibrosis and coalescence seen on x-ray, CT scan and biopsy, but found, correctly, that only Dr. Green diagnosed the existence of complicated pneumoconiosis. Decision and Order at 5-10, 12-14. The administrative law judge acknowledged that "Dr. Green is a most qualified pathologist," but permissibly concluded that his sole opinion diagnosing PMF was not determinative of the existence of the disease in light of the other relevant evidence of record, including the uniformly negative x-ray and CT scan readings by highly qualified readers. *Gray*, 176 F.3d at 388, 21 BLR at 2-626. Contrary to claimant's argument, the introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption found at 20 C.F.R. §718.304. *Gray*, 176 F.3d at 388, 21 BLR at 2-626. We also reject claimant's argument that the administrative law judge erred in finding that the negative x-rays, which are generally considered to be the 'least accurate method' of diagnosing complicated pneumoconiosis, *see Gray*, 176 F.3d at 398-90, 21 BLR at 2-629, outweighed the biopsy evidence. Claimant's Brief at 19. Rather, the administrative law judge acted within his discretion in concluding that the negative radiological evidence tended to support Dr. Oesterling's opinion that the biopsy evidence did not support a diagnosis of complicated pneumoconiosis. *Gray*, 176 F.3d at 388, 21 BLR at 2-626.

Before determining whether invocation of the irrebuttable presumption has been established, the administrative law judge shall first determine whether the evidence in each category under 20 C.F.R. §718.304(a)-(c) tends to establish the existence of complicated pneumoconiosis, and then must weigh together all relevant evidence pursuant to 20 C.F.R. §718.304(a)-(c). *See Gray*, 176 F.3d at 388, 21 BLR at 2-626; *Braenovich v. Cannelton Indus.*, 22 BLR 1-236, 1-245 (2003); *Melnick v. Consolidation Coal Corp.*, 16 BLR 1-31 (1991) (*en banc*). Because the administrative law judge properly considered all of the relevant evidence together pursuant to 20 C.F.R. §718.304(a)-(c), and permissibly concluded that claimant failed to establish the existence of complicated pneumoconiosis by a preponderance of the probative evidence, we affirm the administrative law judge's finding that claimant was not entitled to invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *Gray*, 176 F.3d at 388, 21 BLR at 2-626; *Braenovich*, 22 BLR at 1-245.

Claimant next challenges the administrative law judge's finding pursuant to 20 C.F.R. §718.204(c), that claimant failed to establish that his total disability was due to pneumoconiosis. Claimant specifically argues that the administrative law judge erred in discrediting the opinions of Drs. Green and Saludes, and in crediting the contrary opinion of Dr. Altmeyer. We disagree.

In evaluating the evidence pursuant to 20 C.F.R. §718.204(c), the administrative law judge initially found that Dr. Altmeyer did not attribute claimant's disabling respiratory impairment to pneumoconiosis or coal dust exposure, but opined that claimant was disabled from pulmonary emphysema due to smoking. Decision and Order at 7, 15; Employer's Exhibits 3, 4. The administrative law judge noted that, by contrast, Dr. Green opined that claimant's disability was due to both clinical pneumoconiosis, in the form of progressive massive fibrosis, nodular pneumoconiosis, and interstitial fibrosis due to coal dust exposure, and legal pneumoconiosis in the form of emphysema due to coal dust exposure and smoking. Decision and Order at 16; Claimant's Exhibits 1, 3. The administrative law judge initially found that Dr. Green's opinion regarding the effects of PMF was "undercut" by the weight of the evidence that established that claimant did not have PMF. Decision and Order at 13. The administrative law judge also discredited Dr. Green's opinion that nodular pneumoconiosis and interstitial fibrosis contributed to claimant's disability because it was contrary to the weight of the evidence that claimant's pneumoconiosis was mild, including Dr. Green's own statement that the December 14, 2005 CT scan did not show good evidence of a generalized background of simple pneumoconiosis. Decision and Order at 13; Claimant's Exhibit 3. As claimant does not specifically challenge these findings, they are hereby affirmed. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). In addition, contrary to claimant's argument, the administrative law judge acted within his discretion in discrediting Dr. Green's opinion that claimant's disabling emphysema was due in part to coal dust exposure, because the physician based his opinion on medical studies that show that coal dust exposure can cause emphysema, and he did not sufficiently explain why he believed that in this particular case claimant's emphysema was due to coal dust exposure. *Clark*, 12 BLR at 1-155; *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); Decision and Order at 16; Claimant's Brief at 40.

Regarding the opinion of Dr. Saludes, claimant's treating physician, the administrative law judge permissibly concluded that, as Dr. Saludes failed to provide any rationale for his conclusion that approximately twenty-five percent of claimant's respiratory impairment was due to coal dust exposure, the physician's opinion was entitled to little weight. *See* 20 C.F.R. §718.104(d)(5); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Gross*, 23 BLR at 1-19-20; *Clark*, 12 BLR at 1-155. Whether an opinion is reasoned and documented is a determination to be made by the fact finder based on the validity of the reasoning of a medical opinion in light of the studies conducted and the

objective indications upon which the medical conclusion is based. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6. In this case, as the administrative law judge permissibly discredited the only probative medical opinions that claimant's pneumoconiosis played any role in causing his totally disabling pulmonary impairment, we affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.204(c).

It is within the purview of the administrative law judge to weigh the evidence, draw inferences, and determine credibility. *Crisp*, 866 F.2d at 185, 12 BLR at 2-129. Based on the foregoing, we affirm the administrative law judge's finding that the newly developed evidence did not establish that claimant's total disability was due to pneumoconiosis, either through invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304, or pursuant to 20 C.F.R. §718.204(c). Consequently, we affirm both the administrative law judge's finding that claimant failed to establish a change in an applicable condition of entitlement, and the denial of benefits. 20 C.F.R. §725.309(d).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge