BRB No. 12-0631 BLA

WORLEY C. HILL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY/	)	
PITTSTON COMPANY	)	DATE ISSUED: 06/27/2013
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Micah S. Blankenship (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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:

Employer appeals the Decision and Order (10-BLA-5549) of Administrative Law Judge Richard T. Stansell-Gamm awarding benefits on a claim filed pursuant to the

provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves a subsequent claim filed on February 12, 2009.[1]

After crediting claimant with at least thirty-six years of coal mine employment,[2] the administrative law judge found that the new evidence established the existence of complicated pneumoconiosis, thereby enabling claimant to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. The administrative law judge, therefore, found that claimant established that one of the applicable conditions of entitlement had changed since the date upon which the denial of claimant's prior claim became final. 20 C.F.R. §725.309. Consequently, the administrative law judge considered claimant's 2009 claim on the merits. The administrative law judge found that the evidence, as a whole, established invocation of the irrebuttable presumption pursuant to 20 C.F.R. §718.304. The administrative law judge further found that claimant's complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that claimant's 2009 subsequent claim was timely filed. Employer also contends that the administrative law judge erred in finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's challenge to the timeliness of claimant's 2009 claim.

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).

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[1] Claimant filed three previous claims for benefits, all of which were finally denied. Director's Exhibit 1. Claimant's most recent claim, filed on September 27, 2004, was denied by the district director on June 30, 2005, because claimant did not establish that he was totally disabled by a respiratory or pulmonary impairment. *Id.*

[2] The record indicates that claimant's coal mine employment was in Virginia. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

To establish entitlement 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. 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" 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 he was totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 1. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing that he is totally disabled. 20 C.F.R. §725.309(d).

Timeliness of Claim

Employer initially challenges the administrative law judge's determination that claimant's 2009 subsequent claim was timely filed. Section 422 of the Act provides that "[a]ny claim for benefits by a miner . . . shall be filed within three years after whichever of the following occurs later -- (1) a medical determination of total disability due to pneumoconiosis; or (2) March 1, 1978." 30 U.S.C. §932(f). Miners' claims for black lung benefits are presumptively timely filed. 20 C.F.R. §725.308(c). To rebut the timeliness presumption, employer must show that the claim was filed more than three years after a "medical determination of total disability due to pneumoconiosis" was communicated to the miner. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a).

Employer argues that claimant's 2009 subsequent claim was untimely filed because it was filed more than three years after Dr. Smiddy's April 28, 2005 diagnosis of total disability due to pneumoconiosis was communicated to claimant. Employer notes that, although Dr. Smiddy's diagnosis pre-dates the district director's June 30, 2005 denial of claimant's 2004 prior claim, it post-dates the January 2005 evidence relied upon by the district director to deny that claim. Employer, therefore, asserts that Dr. Smiddy's report is sufficient to trigger the running of the statute of limitations. Employer's Brief at 2-7. Employer's contention has no merit. As the Director notes, the United States Court of Appeals for the Fourth Circuit has held that a medical determination of total disability due to pneumoconiosis predating a prior denial of benefits is legally insufficient to trigger the running of the three-year time limit for filing a subsequent claim.[3] *See Consolidation*

[3] In *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 617, 23 BLR 2-345, 2-363-64 (4th Cir. 2006), the Fourth Circuit noted that "only new evidence *following* the denial of the previous claim, rather than evidence predating the denial, can sustain a subsequent

Coal Co. v. Williams, 453 F.3d 609, 618, 23 BLR 2-345, 2-365 (4th Cir. 2006); *see also J.O.* [*Obush*] *v. Helen Mining Co*., 24 BLR 1-117, 1-122 (2009). In this case, the administrative law judge properly found that the final determination, that claimant was not totally disabled due to pneumoconiosis as of June 30, 2005, necessarily repudiated the April 28, 2005 opinion of Dr. Smiddy that claimant was totally disabled due to pneumoconiosis. Decision and Order at 6. Consequently, the administrative law judge properly found that Dr. Smiddy's medical report could not trigger the running of the three-year time limit for filing claimant's 2009 claim. *Williams*, 453 F.3d at 618, 23 BLR at 2-365; *Obush*, 24 BLR at 1-122. We, therefore, affirm the administrative law judge's finding that claimant's 2009 subsequent claim was timely filed. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a).

Complicated Pneumoconiosis

Employer argues that the administrative law judge erred in finding that the new evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Under Section 411(c)(3) of the Act, 30 U.S.C. §921(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 the miner is suffering from a chronic dust disease of the lung which (A) when diagnosed by x-ray, yields an opacity greater than one centimeter in diameter that would be classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, would be a condition that could reasonably be expected to reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304.

The Fourth Circuit has held that, "[b]ecause prong (A) sets out an entirely objective scientific standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition that is diagnosed by biopsy or autopsy under prong (B) or by other means under prong (C) would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304, the administrative law judge must weigh together all of the evidence relevant to the presence

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claim." The Fourth Circuit reasoned that "[i]t would be illogical and inequitable to hold that a diagnosis that could not sustain a subsequent claim could nevertheless trigger the statute of limitations for such a claim." *Williams*, 453 F.3d at 617-18, 23 BLR at 2-364.

or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 2-1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

20 C.F.R. §718.304(a)

Employer contends that the administrative law judge erred in finding that the new x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). Relevant to 20 C.F.R. §718.304(a), the administrative law judge considered ten interpretations of four new x-rays dated October 5, 2006, January 31, 2009, March 12, 2009, and January 17, 2011.[4] Dr. Westerfield interpreted the October 5, 2006 x-ray as positive for complicated pneumoconiosis. Claimant's Exhibits 3, 4. Because there are no other interpretations of this x-ray, the administrative law judge found that the October 5, 2006 x-ray is positive for complicated pneumoconiosis. Decision and Order at 13.

Dr. Ramakrishnan interpreted the April 21, 2008 x-ray as revealing multiple nodules ranging from 3 mm. to 9 mm. that were "likely due to coal workers' pneumoconiosis." Claimant's Exhibit 4. Because there are no other interpretations of this x-ray, the administrative law judge found that the April 21, 2008 x-ray is negative for complicated pneumoconiosis. Decision and Order at 13.

While Dr. DePonte interpreted the January 31, 2009 x-ray as positive for complicated pneumoconiosis, Director's Exhibit 14, Dr. Scott interpreted the x-ray as negative for the disease. Director's Exhibit 15. Because the January 31, 2009 x-ray was interpreted as both positive and negative for complicated pneumoconiosis by equally qualified physicians, the administrative law judge found that the x-ray was "inconclusive." Decision and Order at 13.

While Drs. DePonte and Alexander interpreted the March 12, 2009 x-ray as positive for complicated pneumoconiosis, Director's Exhibits 10, 12, Drs. Scott and Wheeler interpreted the same x-ray as negative for complicated pneumoconiosis. Director's Exhibits 13, 15. The administrative law judge accorded Dr. Wheeler's negative x-ray interpretation less weight because the doctor ruled out coal workers' pneumoconiosis, in part, because claimant's lungs "were normal 10 years ago presumably after he finished mining." Decision and Order at 13; Director's Exhibit 13. The administrative law judge noted that Dr. Wheeler's view was contrary to the

[4] The administrative law judge noted that all of the physicians who interpreted claimant's new x-rays (Drs. Westerfield, Ramakrishnan, DePonte, Scott, Alexander, and Wheeler) are dually qualified as Board-certified radiologists and B readers.

regulations, recognizing that pneumoconiosis is a latent and progressive disease which may first become detectable only after the cessation of coal dust exposure. Decision and Order at 13. Because two of the three remaining physicians interpreted the March 12, 2009 x-ray as positive for complicated pneumoconiosis, the administrative law judge found that the x-ray was positive for complicated pneumoconiosis. *Id.* at 13-14.

Finally, while Dr. DePonte interpreted the January 17, 2011 x-ray as positive for complicated pneumoconiosis, Claimant's Exhibit 7, Dr. Scott interpreted the x-ray as negative for the disease. Employer's Exhibit 17. Because the January 17, 2011 x-ray was interpreted as both positive and negative for complicated pneumoconiosis by equally qualified physicians, the administrative law judge found that the x-ray was "inconclusive." Decision and Order at 14.

The administrative law judge found that the new x-ray evidence established the existence of complicated pneumoconiosis:

> [S]etting aside the two inconclusive studies (January 31, 2009, and January 17, 2011), of the remaining three chest x-rays, while the April 21, 2008 radiographic study is negative, the films from October 5, 2006 and March 12, 2009 are positive for a large pulmonary opacity consistent with pneumoconiosis. [The October 5, 2006 and March 12, 2009 x-rays] represent the preponderance of the probative chest x-rays, and thus, outweigh the negative study. Consequently, the preponderance of the probative chest x-ray evidence establishes the presence of a large pulmonary opacity consistent with pneumoconiosis under 20 C.F.R. §718.304(a).

Decision and Order at 14.

Employer contends that the administrative law judge erred in finding that the March 29, 2009 x-ray was positive for complicated pneumoconiosis. Employer specifically argues that the administrative law judge erred in discounting Dr. Wheeler's interpretation of the March 29, 2009 x-ray. We disagree. The administrative law judge accurately noted that Dr. Wheeler, in ruling out complicated pneumoconiosis, relied, in part, on the fact that claimant's lungs were normal after he stopped working in the mines. Decision and Order at 13; Director's Exhibit 13. The administrative law judge permissibly found that Dr. Wheeler's x-ray interpretation was entitled to less weight because it is inconsistent with the recognition that pneumoconiosis is a latent and progressive disease. 20 C.F.R. §718.201(c) (recognizing that pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure"); *see* 65 Fed. Reg. 79,971 (Dec. 20, 2000).

We also reject employer's contention that the administrative law judge, after according less weight to Dr. Wheeler's interpretation of the March 12, 2009 x-ray, improperly relied on a "head count" to weigh the remaining interpretations of the March 12, 2009 x-ray. After discrediting Dr. Wheeler's interpretation of the March 12, 2009 x-ray, the administrative law judge noted that two of three remaining physicians who interpreted the March 12, 2009 x-ray read it as positive for complicated pneumoconiosis. Decision and Order at 13-14; Director's Exhibits 10-12. Because all of the physicians possessed equal radiological qualifications, the administrative law judge found that the March 12, 2009 x-ray was positive for complicated pneumoconiosis. *Id.* Contrary to employer's argument, the administrative law judge properly considered the number of x-ray interpretations, along with the readers' qualifications, and the actual readings in finding the March 12, 2009 x-ray to be positive for complicated pneumoconiosis. *See Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *see also Wheatley v. Peabody Coal Co.*, 6 BLR 1-1214 (1984); *see generally Gober v. Reading Anthracite Co.*, 12 BLR 1-67 (1988). Because it is supported by substantial evidence, the administrative law judge's finding, that the March 12, 2009 x-ray is positive for complicated pneumoconiosis, is affirmed.

Because employer does not raise any additional error in regard to the administrative law judge's finding that the new x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a),[5] this finding is affirmed.

20 C.F.R. §718.304(c)

The record also contains a range of other new diagnostic evidence under Section 718.304(c),[6] including a digital chest x-ray reading, computerized tomography (CT) scan readings, and medical opinion evidence. The administrative law judge found the new digital x-ray, CT scan, and medical opinion evidence established the existence of

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[5] Employer contends that the administrative law judge erred in finding that Dr. Ramakrishnan's interpretation of the April 21, 2008 x-ray supported a finding of *simple* pneumoconiosis. Employer's Brief at 5. Employer, however, fails to explain how the administrative law judge's error, if any, in finding that the April 21, 2008 x-ray supported a finding of simple pneumoconiosis undermines the administrative law judge's finding that the x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). *See Larioni v. Director, OWCP*, 6 BLR 1-1284 (1984).

[6] Because there is no new biopsy evidence in the record, there was no new evidence to consider pursuant to 20 C.F.R. §718.304(b).

complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c). Decision and Order at 21, 32.

Employer contends that the administrative law judge erred in his consideration of the new digital x-ray and CT scan evidence.[7] The record contains two interpretations of a new digital x-ray taken on August 4, 2009. While Dr. Alexander, a Board-certified radiologist and a B reader, interpreted the digital x-ray as positive for complicated pneumoconiosis, Director's Exhibit 14, Dr. Hippensteel, a B reader and Board-certified pulmonologist, interpreted the digital x-ray as negative for complicated pneumoconiosis. Director's Exhibit 13. The administrative law judge credited Dr. Alexander's positive interpretation of the August 4, 2009 digital x-ray, over Dr. Hippensteel's negative interpretation, based upon Dr. Alexander's superior radiological qualifications. Decision and Order at 15-16.

Employer argues that the administrative law judge erred in crediting Dr. Alexander's interpretation over that of Dr. Hippensteel. We disagree. The administrative law judge acted within his discretion in crediting Dr. Alexander's positive interpretation over Dr. Hippensteel's negative interpretation, based upon his superior radiological qualifications, explaining that "the underlying basis for the increased probative value of a radiographic interpretation by a radiologist who is both [B]oard[-]certified and a B reader remains viable for digital x-rays."[8] *See* 20 C.F.R. §718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 15 n.17. The administrative law judge, therefore, permissibly found that the August 4, 2009 digital x-ray is positive for

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[7] Because employer does not challenge the administrative law judge's finding that the new medical opinion evidence established the existence of complicated pneumoconiosis, this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[8] Consistent with the administrative law judge's analysis, the Department of Labor recently proposed revisions to the regulations governing the admission and weighing of chest x-rays to include digital x-ray readings, and to provide that they be weighed based on the readers' radiological credentials:

> By adopting quality standards for digitally acquired chest X-rays, the Department intends that interpretations of film and digital X-rays . . . will be put on equal footing both for admission into evidence and for the weight accorded them.

78 Fed. Reg. 35,575, 35,577 (proposed June 13, 2013) (explaining standards to be codified at 20 C.F.R. §§718.102, 718.202(a)(1), and 718.304).

complicated pneumoconiosis. We, therefore, affirm the administrative law judge's finding that the new digital x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c).

Employer also contends that the administrative law judge erred in finding that the new CT scan evidence established the existence of complicated pneumoconiosis. The record contains interpretations of five new CT scans taken on December 8, 2008, April 14, 2009, August 31, 2009, October 27, 2009, and November 2, 2010. After finding that the April 14, 2009 and August 31, 2009 CT scans were inconclusive, the administrative law judge considered the conflicting interpretations of the remaining CT scans.

Dr. van der Westhuizen, a Board-certified radiologist, interpreted the December 8, 2008 CT scan as suggestive of massive pulmonary fibrosis, noting the presence of several pulmonary nodules, including a 3.6 cm. x 2.4 cm. opacity in the right upper lobe, and a 2.6 cm. x 2.4 cm. nodule in the left lung base. Claimant's Exhibits 2-4. Although Dr. Hippensteel, a B reader and Board-certified pulmonologist, also identified several large densities on the December 8, 2008 CT scan, he opined that the findings were more compatible with granulomatous disease than progressive massive fibrosis. Director's Exhibit 13. Dr. DePonte, a Board-certified radiologist and B reader, interpreted the December 8, 2008 CT scan as revealing several large opacities, including a 40 mm. x 15 mm. opacity in the right upper lobe. Claimant's Exhibit 13. Dr. DePonte indicated that the nodules were consistent with coal workers' pneumoconiosis. *Id.* The administrative law judge found that Dr. DePonte's interpretation supported a finding of complicated pneumoconiosis. Decision and Order at 17. The administrative law judge further found that Dr. DePonte's interpretation was entitled to the greatest weight based upon her superior radiological qualifications. *Id.* The administrative law judge, therefore, found that the December 8, 2008 CT scan supported a finding of complicated pneumoconiosis. Decision and Order at 17.

Dr. Saadeh, a Board-certified radiologist, interpreted the October 27, 2009 CT scan as consistent with coal workers' pneumoconiosis, and early progressive massive fibrosis. Claimant's Exhibits 3, 4. Dr. Hippensteel opined that the abnormalities on the October 27, 2009 CT scan were from granulomatous disease rather than coal workers' pneumoconiosis. Employer's Exhibit 14. Dr. DePonte interpreted the October 27, 2009 CT scan as revealing nodular interstitial disease with typical features of complicated pneumoconiosis with coalescence into large opacities. Claimant's Exhibit 14. The administrative law judge found that Dr. DePonte's interpretation was entitled to the greatest weight based upon her superior radiological qualifications. Decision and Order at 18-19. The administrative law judge, therefore, found that the October 27, 2009 CT scan supported a finding of complicated pneumoconiosis.

Dr. van der Westhuizen interpreted the November 2, 2010 CT scan as consistent with coal workers' pneumoconiosis and progressive massive fibrosis. Claimant's Exhibits 3, 4. Dr. Hippensteel interpreted the abnormalities on the November 2, 2010 CT scan as consistent with granulomatous disease. Employer's Exhibit 14. Dr. DePonte interpreted the November 2, 2010 CT scan as revealing nodular interstitial disease with coalescence into the large opacities typical for coal workers' pneumoconiosis. Claimant's Exhibit 15. The administrative law judge again found that Dr. DePonte's interpretation was entitled to the greatest weight based upon her superior qualifications. Decision and Order at 20. The administrative law judge, therefore, found that the November 2, 2010 CT scan supported a finding of complicated pneumoconiosis. Having found the December 8, 2008, October 27, 2009, and November 2, 2010 CT scans supported a finding of complicated pneumoconiosis, the administrative law judge found that the preponderance of the new CT scan evidence established the existence of complicated pneumoconiosis. *Id.* at 20.

Employer argues that the administrative law judge erred in crediting Dr. DePonte's positive CT scan interpretations over Dr. Hippensteel's negative CT scan interpretations based upon Dr. DePonte's superior qualifications.[9] The Department of Labor (DOL) has not issued guidelines for administrative law judges to follow when assessing the reliability of a physician's interpretation of a CT scan. In the absence of controlling statutory language or guidance from DOL, an administrative law judge's weighing of CT scan evidence may be accorded deference, unless it is found to be irrational or unlawful. *See Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 893-94, 22 BLR 2-409, 2-422-24 (7th Cir. 2002).

Moreover, as the court observed in *Stein*, "CT scans are typically read by radiologists (some of whom may in addition be classified as B-readers) who have specialized knowledge and have developed a certain expertise through the years of

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[9] In regard to Dr. Hippensteel's qualifications, employer notes that:

> Dr. Hippensteel testified that he received specific training in the interpretation of chest x-rays and CT scans in his pulmonary medicine fellowship. He was tested on his expertise in interpreting chest x-rays and chest CT scans as part of his board certification examination. He further testified that he reviews and interprets chest x-rays and chest [computerized tomography] scans without any assistance from radiologists on a daily basis in his pulmonary medicine practice.

Employer's Brief at 11.

training and experience interpreting this particular test." *Stein*, 294 F.3d at 893-94, 22 BLR at 2-422-23. Notably, in this case, the administrative law judge did not find that Dr. Hippensteel was not qualified to interpret CT scans. Rather, the administrative law judge found that Dr. DePonte's dual qualifications as a Board-certified radiologist and B reader entitled her interpretations of the CT scans to greater weight than Dr. Hippensteel's contrary interpretations. Decision and Order at 17 n.20, 20. Although the administrative law judge acknowledged that Dr. Hippensteel was qualified as a B reader, and was tested on his expertise in interpreting CT scans as part of obtaining his Board-certification in Pulmonary Disease, the administrative law judge found that he was not as qualified as a B reader *and* Board-certified radiologist to interpret CT scans. Decision and Order at 17 n.20. Because the administrative law judge's weighing of the respective qualifications of Drs. DePonte and Hippensteel was rational and within his discretion, we hold that the administrative law judge permissibly accorded greater weight to Dr. DePonte's CT scan interpretations based on her superior qualifications. *See Stein*, 294 F.3d at 893-94, 22 BLR at 2-422-23 Because employer raises no other contentions of error, we affirm the administrative law judge's finding that the new CT scan evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c).

Weighing all of the new evidence together, the administrative law judge found that it established the existence of complicated pneumoconiosis, thereby enabling claimant to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. Decision and Order at 32. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the new evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. In light of our affirmance of this finding, we further affirm the administrative law judge's finding that claimant established that one of the applicable conditions of entitlement has changed since the date upon which the denial of claimant's prior claim became final. 20 C.F.R. §725.309.

Because it is unchallenged on appeal, we affirm the administrative law judge's finding that all of the relevant evidence of record, when considered together on the merits, established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, thereby enabling claimant to establish entitlement based on the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304.[10] *See*

[10] Employer argues that the administrative law judge, in considering all of the relevant evidence, erred in considering Dr. Smiddy's interpretation of an April 25, 2005 x-ray. Employer's Brief at 12. Employer contends that this x-ray interpretation violated the evidentiary limitations set forth at 20 C.F.R. §725.414. Employer's contention has no merit. Dr. Smiddy's interpretation of the April 25, 2005 x-ray is contained in a medical report comprising claimant's treatment records, and is, therefore, admissible. *See* 20 C.F.R. §725.414(a)(4); Claimant's Exhibit 4.

Lester, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Melnick*, 16 BLR at 1-33-34; Decision and Order at 34-42.

Finally, because it is unchallenged on appeal, we affirm the administrative law judge's finding that employer did not rebut the presumption that claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *Skrack v. Island Creek Coal Co.*, 6 BLR at 1-710 (1983).

Accordingly, the administrative law judge's Decision and Order awarding 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