U.S. Department of Labor

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

BRB No. 22-0289 BLA

LEWIS E. DUNBAR, SR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PINNACLE MINING COMPANY, LLC	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND c/o HEALTHSMART CCS	)	DATE ISSUED: 8/24/2023
	)	
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 Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Brad A. Austin, and Cameron Blair (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Christopher M. Green and Wesley A. Shumway (Spilman Thomas & Battle, PLLC), Charleston, West Virginia, for Employer and its Carrier.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2020-BLA-05274) rendered on a subsequent claim filed on May 31, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ credited Claimant with at least ten years of coal mine employment. She found he established complicated pneumoconiosis and invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, and thus established a change in an applicable condition of entitlement.[2] 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c). Further, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer argues the ALJ erroneously denied it the opportunity to obtain and submit post-hearing deposition testimony from Dr. Meyer. It also argues she erred in excluding a treatment record CT scan. On the merits, it asserts she erred in finding Claimant established complicated pneumoconiosis.[3] Claimant responds in support of the

[1] This is Claimant's fourth claim for benefits. Director's Exhibits 1-3. On April 15, 2015, the district director denied Claimant's prior claim, filed on August 22, 2014, because he failed to establish total disability. Director's Exhibit 3.

[2] Where 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 she 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). Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element to obtain review of the merits of his current claim. *Id.*

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least ten years of coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 33.

award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief. Employer has filed a reply brief reiterating its contentions.

The Benefits Review 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).

Evidentiary Issue

Employer argues the ALJ erred in not allowing it an opportunity to depose Dr. Meyer post-hearing after she allowed Claimant to amend his evidentiary designations three days before the hearing in this case. Employer's Brief at 26-27. We disagree.

An ALJ exercises broad discretion in resolving procedural and evidentiary matters. *See 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). Thus, a party seeking to overturn the disposition of a procedural or evidentiary issue must establish the ALJ's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

On October 29, 2019, Claimant submitted Dr. Crum's reading of an October 9, 2019 x-ray to the district director. Director's Exhibit 19. Thereafter, at Employer's request, Dr. Meyer read the October 9, 2019 x-ray. Employer's Exhibit 7. Both parties exchanged these readings twenty days before the June 24, 2021 hearing. Director's Exhibit 19; Employer's Exhibit 7.

On May 5, 2021, Employer submitted its initial evidentiary designations. Claimant's Reply at 8; Exhibit A to Claimant's Reply; Hearing Tr. at 31-32. Employer designated Dr. Meyer's reading of a March 4, 2021 x-ray as an affirmative x-ray. *Id.* It did not designate a second affirmative x-ray. *Id.* In addition, as rebuttal evidence, it selected Dr. Meyer's reading and Dr. Adcock's reading of the October 9, 2019 x-ray, and Dr. Adcock's reading of a July 11, 2020 x-ray. *Id.* On May 31, 2021, Claimant submitted his initial evidentiary designations and chose Dr. DePonte's reading of the October 9, 2019 x-ray and her reading of the July 11, 2020 x-ray as his affirmative x-ray readings. May 31,

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3 n.2; Hearing Tr. at 20.

2021 Claimant's Evidence Form. As rebuttal evidence, he designated Dr. Crum's reading of a July 31, 2019 x-ray and Dr. DePonte's reading of a March 4, 2020 x-ray. *Id.*

On June 4, 2021, Employer amended its Evidence Summary Form and moved Dr. Meyer's reading of the October 9, 2019 x-ray from its rebuttal evidence to its second available affirmative x-ray slot.[5] June 4, 2021 Employer's Evidence Form. After receiving Employer's updated evidentiary designations, and three days before the hearing, Claimant amended his Evidence Summary form in response to Employer's amended form. June 21, 2021 Claimant's Amended Evidence Form; Hearing Tr. at 31-32. He now designated Dr. Crum's reading of the October 9, 2019 x-ray as a rebuttal x-ray, rather than the physician's reading of the July 31, 2019 x-ray, in rebuttal of Employer's newly designated affirmative evidence, Dr. Meyer's x-ray reading. *Id.*

At the hearing, Employer requested that it be allowed to obtain Dr. Meyer's deposition post-hearing given that Claimant had amended his evidentiary designations and selected Dr. Crum's October 9, 2019 x-ray reading in rebuttal to Dr. Meyer's reading three days before the hearing. Hearing Tr. at 26-30. In response, the ALJ stated that, absent good cause or the consent of the parties, the parties must exchange evidence no later than twenty days before the hearing in compliance with 20 C.F.R. §725.456(b)(3). Hearing Tr. at 33. Because Claimant objected to Employer obtaining Dr. Meyer's deposition post-hearing and because Employer did not show good cause for the late development of such evidence, the ALJ denied Employer's request. Hearing Tr. at 27, 29, 34.

Employer argues the ALJ abused her discretion by allowing Claimant to amend his evidentiary designations after the twenty-day deadline and by refusing to keep the record open for Employer to depose Dr. Meyer post-hearing in response. Employer's Brief at 26-27. We disagree.

Employer misconstrues 20 C.F.R. §725.456(b) which does not, as Employer asserts, require the parties to submit final evidentiary designations twenty days before the hearing. Rather, it requires the parties to exchange evidence twenty days before the hearing. 20 C.F.R. §725.456(b). Thus, we see no abuse of discretion in the ALJ's permitting Claimant to amend his evidentiary designations. *See Blake*, 24 BLR at 1-113. Allowing Claimant to do so is buttressed by the fact that Employer triggered the amended evidentiary designations when it moved Dr. Meyer's reading of the October 9, 2019 x-ray from a rebuttal x-ray to an affirmative x-ray.

[5] As rebuttal x-ray readings, Employer designated Dr. Adcock's reading of the October 9, 2019 x-ray and his reading of the July 11, 2020 x-ray, as well as Dr. Meyer's reading of the July 31, 2019 x-ray. June 4, 2021 Employer's Evidence Form.

Further, Claimant complied with 20 C.F.R. §725.456(b) by exchanging Dr. Crum's October 9, 2019 x-ray reading well before the twenty-day deadline. Director's Exhibit 19. Because Employer was aware of Dr. Crum's x-ray reading as it was submitted to the district director on October 29, 2019, and it had the opportunity to obtain rebuttal evidence in advance of the hearing on June 24, 2021, it has not shown how Claimant's designation of the reading constitutes good cause for the development and submission of Dr. Meyer's deposition post-hearing. 20 C.F.R. §725.456(b)(3); Director's Exhibit 19. Thus, Employer has not shown that the ALJ abused her discretion in denying its request. *See Blake*, 24 BLR at 1-113; 20 C.F.R. §725.456(b).

Complicated Pneumoconiosis

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 x-ray, yields one or more opacities 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 yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-rays and medical opinions support a finding of complicated pneumoconiosis.[6] 20 C.F.R. §718.304(a), (c); Decision and Order at 7-11, 16-26. She further determined the computed tomography (CT) scan evidence does not support the presence or absence of complicated pneumoconiosis, and that Claimant's treatment records support a finding that he does not have complicated pneumoconiosis but are entitled to "little probative weight." Decision and Order at 13-15, 30-31; *see* 20 C.F.R. §718.304(c). Weighing all the evidence together, she found the x-ray and medical opinion evidence

[6] The ALJ found the record contains no biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 7 n.3.

outweigh the treatment records and inconclusive CT scans, and Claimant thus established complicated pneumoconiosis.[7] Decision and Order at 31-33.

20 C.F.R. §718.304(a) - X-rays

The ALJ considered thirteen interpretations of six x-rays dated November 2, 2015, July 31, 2019, August 9, 2019, October 9, 2019, March 4, 2020, and July 11, 2020. Decision and Order at 8-12. She found all the physicians who interpreted these x-rays are dually-qualified B readers and Board-certified radiologists. Decision and Order at 11, 30; Director's Exhibits 13, 19, 20; Claimant's Exhibits 2-4; Employer's Exhibits 1, 2, 6-8, 10, 12.

Drs. DePonte and Crum read the July 31, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Meyer read it as negative. Director's Exhibit 13 at 31; Claimant's Exhibit 4 at 2; Employer's Exhibit 1 at 2. Drs. DePonte and Crum also read the October 9, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Meyer and Adcock read it as negative. Director's Exhibits 19 at 2, 20 at 2; Employer's Exhibits 7 at 2, 8 at 1. Dr. DePonte read the March 4, 2020 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Meyer read it as negative. Claimant's Exhibit 3 at 2; Employer's Exhibit 10 at 2. Finally, Dr. DePonte read the July 11, 2020 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative. Claimant's Exhibit 2 at10; Employer's Exhibit 12 at 1.

The ALJ found the July 31, 2019 x-ray positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read it as positive for the disease than as negative. Decision and Order at 12. She found the readings of the October 9, 2019, March 4, 2020, and July 11, 2020 x-rays are in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive for complicated pneumoconiosis compared to negative for the disease. *Id*. Because one x-ray is positive for complicated pneumoconiosis and the readings of the remaining x-rays are in equipoise, she found the preponderance of the x-ray evidence supports a finding of complicated pneumoconiosis. *Id*.

The ALJ also considered Dr. Creasy's reading of a November 2, 2015 x-ray and Dr. Lambert's reading of an August 9, 2019 x-ray contained in Claimant's treatment records. Employer's Exhibits 2, 6. Neither x-ray interpretation addressed the existence of

[7] The ALJ found the x-ray evidence, CT scan evidence, and medical opinion evidence establish simple pneumoconiosis. Decision and Order at 31. As Employer does not challenge this finding on appeal, we affirm it. *Skrack*, 6 BLR at 1-711.

pneumoconiosis, and the ALJ thus found they do not establish the presence or absence of complicated pneumoconiosis. *Id.*

Employer argues the ALJ erred in discrediting Dr. Creasy's reading of the November 2, 2015 x-ray and Dr. Lambert's reading of the August 9, 2019 x-ray found in Claimant's treatment records. Employer's Brief at 22-23. We disagree.

Claimant was seen for chest pain at Ballad Health on November 2, 2015, and underwent a chest x-ray. Employer's Exhibit 2. The record from this visit indicates Claimant had been diagnosed with ischemic chest pain and coronary artery disease. *Id.* Dr. Creasy read the x-ray and opined Claimant's heart size was within normal limits, and his lungs were clear with no pleural effusions or acute abnormality. *Id.*

On August 9, 2019, Claimant was seen for chest pain again at Raleigh General Hospital. Employer's Exhibit 6 at 3. This hospitalization record reflects that Claimant has a history of hypertension, hyperlipidemia, chronic ischemic heart disease, and an acute myocardial infarction in 2010. *Id.* It states Claimant had severe retrosternal chest pain radiating into his left arm that morning and an x-ray was administered, which showed "[n]o radiographic evidence of acute cardiopulmonary process," and "[t]he lungs are clear[; t]he cardiomediastinal silhouette and pulmonary vascularity are within normal limits." *Id.* at 19.

The ALJ has discretion to determine the weight to accord an x-ray that is silent on the existence of pneumoconiosis. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984). Contrary to Employer's contention, the ALJ permissibly found that, while the November 2, 2015 and August 9, 2019 x-rays do not include diagnoses of complicated pneumoconiosis, those records do not undermine her finding that the overall weight of the x-rays is positive for the disease because Claimant's treating physicians were focused on his immediate health concern of chest pains rather than the existence of pneumoconiosis. *Id.*; *see* Decision and Order at 30.

Because the ALJ's finding is supported by substantial evidence and Employer does not make any additional argument challenging the ALJ's finding that the x-ray evidence supports a finding of complicated pneumoconiosis, we affirm it. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08 (4th Cir. 2000); 20 C.F.R. §718.304(a); Decision and Order at 12.

20 C.F.R. §718.304(c) – CT scans

Employer also argues the ALJ erred in weighing the CT scan evidence. Employer's Brief at 16-20.

Dr. DePonte read the November 21, 2019 CT scan as positive for complicated pneumoconiosis, while Dr. Meyer read it as negative for the disease. Claimant's Exhibit 1; Employer's Exhibit 13. Dr. Ratcliff also read the November 21, 2019 CT scan and noted there is scarring in the right upper lobe along with old granulomatous disease, but there is no evidence of a pulmonary nodule or mass. Employer's Exhibit 6 at 22-23. The ALJ did not consider Dr. Ratcliff's reading because she found it was submitted in excess of the evidentiary limitations. Decision and Order at 13-14. Regarding the readings by Drs. DePonte and Meyer, the ALJ found they are entitled to equal weight and therefore are in equipoise on the issue of complicated pneumoconiosis, and thus the CT scan evidence does not support the presence or absence of the disease. *Id.* at 15.

Employer contends the ALJ erred in excluding Dr. Ratcliff's reading of the November 21, 2019 CT scan because it is admissible as treatment record evidence under 20 C.F.R. §725.414(a)(4).[8] Employer's Brief at 16-20; Employer's Exhibits 6, 11. We agree.

The regulations set limits on the amount of specific types of medical evidence the parties can submit into the record. 20 C.F.R. §725.414. In support of their affirmative cases, each party is limited to one reading of each CT scan submitted as affirmative evidence. *Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-135 (2006) (en banc); *see* 20 C.F.R. §718.107. However, the regulations further provide that "[n]otwithstanding the limitations" of 20 C.F.R. §725.414(a)(2), (3), "any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease, may be received into evidence." 20 C.F.R. §725.414(a)(4).

Employer designated Dr. Meyer's interpretation of the November 21, 2019 CT scan as affirmative evidence on its evidence summary form. June 4, 2021 Employer's Evidence Form; Employer's Exhibit 13. It also designated records from Raleigh General Hospital, which contain Dr. Ratcliff's reading of the November 21, 2019 CT scan, as a hospitalization record under 20 C.F.R. §725.414(a)(4). June 4, 2021 Employer's Evidence Form; Employer's Exhibit 6. Thus, Dr. Ratcliff's reading is not subject to the evidentiary limitations at 20 C.F.R. §725.414(a)(2) and (a)(3), and the ALJ erred in excluding it from consideration. 20 C.F.R. §725.414(a)(4). Because the inclusion of Dr. Ratcliff's CT scan reading may affect the ALJ's weighing of the CT scan evidence, we vacate her finding that

[8] Employer also argues the ALJ erred in excluding Dr. Porterfield's treatment notes. Employer's Brief at 18-19, 23. Contrary to Employer's assertion, the ALJ did not exclude Dr. Porterfield's treatment notes, but considered them alongside Claimant's treatment record evidence rather than when considering the CT scan evidence. Decision and Order at 13-14, 26, 30; Employer's Exhibit 11.

it is in equipoise on the issue of complicated pneumoconiosis. *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (failure to discuss relevant evidence requires remand); 20 C.F.R. §718.304(c); Decision and Order at 15.

Consequently, we also agree with Employer that the ALJ's weighing of Dr. Porterfield's treatment notes was tainted by her erroneous exclusion of Dr. Ratcliff's CT scan reading. Employer's Brief 23-24. The ALJ found Dr. Porterfield's treatment notes were "wholly derivative of Dr. Ratcliff's" excluded CT scan reading and thus entitled to reduced probative weight. Decision and Order at 24. As the ALJ erred in excluding Dr. Ratcliff's CT scan reading, she also erred in reducing the weight given to Dr. Porterfield's treatment notes on the basis that they rely on that evidence. *McCune*, 6 BLR at 1-998. We therefore vacate the ALJ's finding the treatment record evidence is entitled to little weight. Decision and Order at 31.

20 C.F.R. §718.304(c) - Medical Opinions

Next, Employer contends the ALJ erred in weighing the medical opinion evidence. 20 C.F.R. §718.304(c). The ALJ considered the opinions of Drs. Green, Werchowski, DePonte, Zaldivar, and Basheda. Decision and Order at 15-26; Director's Exhibit 13; Claimant's Exhibits 2, 7; Employer's Exhibits 9, 14-16. Drs. Green, Werchowski, and DePonte opined that Claimant has complicated pneumoconiosis, while Drs. Zaldivar and Basheda opined he does not have the disease. Director's Exhibit 13; Claimant's Exhibits 2, 7; Employer's Exhibits 9, 14-16. The ALJ discredited the opinions of Drs. Green, Werchowski, Zaldivar, and Basheda because they are not reasoned and documented. Decision and Order at 22-25. However, she found Dr. DePonte's opinion credible because it is reasoned and documented. *Id*. at 25-26. Thus she found the medical opinion evidence supports a finding of complicated pneumoconiosis. *Id.*; *see* 20 C.F.R. §718.304(c).

Employer argues the ALJ erred in discrediting the opinions of Drs. Zaldivar and Basheda. Employer's Brief at 20-21.

Drs. Zaldivar and Basheda opined that Claimant does not have complicated pneumoconiosis based, in part, on their assumption that the x-ray evidence is negative for complicated pneumoconiosis. Employer's Exhibits 9 at 6, 14 at 27, 15 at 17, 16 at 21. The ALJ permissibly found their opinions contrary to her finding that the x-ray evidence is positive for complicated pneumoconiosis.[9] *Hobet Mining, LLC v. Epling*, 783 F.3d 498,

[9] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Zaldivar and Basheda, we need not address Employer's additional arguments as to why the ALJ erred in weighing their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 20-21.

504-05 (4th Cir. 2015); Decision and Order at 23-25. Because Employer does not challenge this finding or the ALJ's finding that Dr. DePonte's opinion is credible, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 23-25. Therefore we affirm her finding the medical opinion evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 26.

Remand Instructions

On remand, the ALJ must consider Dr. Ratcliff's reading of the November 21, 2019 CT scan and weigh all of the CT scan evidence together to determine if they support a finding of complicated pneumoconiosis, resolving conflicts in the evidence appropriately and providing valid bases for her determinations. 20 C.F.R. §718.304(c); *Compton*, 211 F.3d at 208-11; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 (4th Cir. 1999) ("[T]he 'substantial evidence' standard is tolerant of a wide range of findings on a given record."); *Melnick*, 16 at 1-33. She must consider the explanations for the physicians' conclusions, the documentation underlying their medical judgment, and the sophistication of, and bases for, their diagnoses. *Milburn Colliery v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). The ALJ must also reevaluate Dr. Porterfield's treatment notes and reweigh the treatment record evidence. *See* 20 C.F.R. §718.304(c). In addition, she must weigh together all the relevant evidence at 20 C.F.R. §718.304(a)-(c) before determining whether Claimant invoked the Section 411(c)(3) presumption. 20 C.F.R. §718.304; *Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56; *Melnick*, 16 BLR at 1-33.

If the ALJ finds Claimant has met his burden to establish complicated pneumoconiosis, Claimant will have invoked the irrebuttable presumption of total disability due to pneumoconiosis and the ALJ may reinstate the award of benefits.[10] 20 C.F.R. 718.304. If the ALJ finds Claimant has not established complicated pneumoconiosis, she must determine whether Claimant has established entitlement under Section 411(c)(4)[11] or 20 C.F.R. Part 718. 30 U.S.C. §§901, 921(c)(4); 20 C.F.R. §§718.3, 718,202, 718,203, 718.204, 718.305.

[10] We affirm, as unchallenged, the ALJ's finding that Claimant's pneumoconiosis arose out of his coal mine employment. *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.203(b); Decision and Order at 33.

[11] Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed in part, vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.