U.S. Department of Labor

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

BRB No. 19-0061 BLA

LARRY E. KISER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DICKENSON-RUSSELL COAL COMPANY, LLC	)	
	)	
and	)	DATE ISSUED: 07/23/2020
	)	
BRICKSTREET MUTUAL INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

Larry E. Kiser, Dante, Virginia.

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

Cynthia Liao (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: BUZZARD, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] the Decision and Order Denying Benefits (2017-BLA-05234) of Administrative Law Judge Paul C. Johnson, Jr., rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (Act). This case involves a miner's claim filed on July 13, 2015.

The administrative law judge credited Claimant with 37.16 years of underground coal mine employment, but found he did not establish complicated pneumoconiosis. Therefore, Claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The administrative law judge also found Claimant did not establish a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2). Thus, he found Claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4), 30 U.S.C. §921(c)(4),[2] and denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer and its Carrier (Employer) respond in support of the decision.[3] The Director, Office of Workers' Compensation Programs (the Director), filed a response asserting the administrative law

[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on Claimant's behalf that the Board review the administrative law judge's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] Employer argues in the alternative that the administrative law judge erred in weighing the opinions of Drs. Basheda and Fino relevant to total disability.

judge misapplied the equivalency determination requirement for establishing complicated pneumoconiosis and failed to consider all relevant evidence.[4]

In an appeal a claimant files without the assistance of counsel, the Benefits Review Board (the Board) considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.[5] 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any one of these elements precludes an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), establishes 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 large 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 reveal a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The United States Court of Appeals for the Fourth Circuit holds that because 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

[4] We affirm the administrative law judge's uncontested finding that Claimant has 37.16 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-8.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant's coal mine employment occurred in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 9.

determine whether a condition which is diagnosed by biopsy or autopsy under prong (b) or by any other means under prong (c) would show as an opacity greater than one centimeter if it were seen on a chest x-ray. *See Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999).

Relevant to prong (a), *see* 20 C.F.R. §718.304(a), the administrative law judge considered ten readings of five chest x-rays dated April 16, 2014, July 29, 2015,[6] January 14, 2016, April 20, 2016, and February 22, 2018. Decision and Order at 8-10; Director's Exhibits 21, 22, 29, 30; Claimant's Exhibits 1, 2; Employer's Exhibits 2, 7, 8. All the physicians who read Claimant's x-rays are dually-qualified B readers and Board-certified radiologists. Dr. DePonte read the April 16, 2014 x-ray as positive for complicated pneumoconiosis, while Dr. Wolfe read it as negative for pneumoconiosis. Claimant's Exhibit 1; Director's Exhibit 22. Dr. DePonte and Dr. Miller read the July 29, 2015 x-ray as positive for complicated pneumoconiosis, while Dr. Wolfe read it as negative for pneumoconiosis. Director's Exhibits 21, 22, 29. Dr. DePonte read the January 14, 2016 and April 20, 2016 x-rays as positive for complicated pneumoconiosis, while Dr. Adcock read them as negative for pneumoconiosis. Claimant's Exhibits 1, 2; Employer's Exhibits 2, 8. Finally, Dr. Adcock read the February 22, 2018 x-ray as negative for pneumoconiosis. Employer's Exhibit 7.

The administrative law judge considered the respective qualifications of the physicians when weighing the x-ray evidence and found the July 29, 2015 x-ray positive for complicated pneumoconiosis because Drs. DePonte and Miller "found a mix of rounded and irregular opacities" and Dr. Miller has superior academic qualifications as a professor of radiology.[7] Decision and Order at 32-33. He also found the February 22, 2018 x-ray negative for complicated pneumoconiosis as Dr. Adcock, who provided the only reading of this x-ray, did not diagnose the disease. Decision and Order at 33. Further, he found the April 16, 2014 x-ray inconclusive because Dr. DePonte interpreted it as positive for complicated pneumoconiosis and Dr. Wolfe interpreted it as negative. Similarly, he found the April 20, 2016 and January 14, 2016 x-rays inconclusive because Dr. DePonte

[6] Dr. Gaziano interpreted the July 29, 2015 x-ray film for quality only. Director's Exhibit 30. He observed "multiple nodules" and noted "a linear density" in the "right lower zone" needs clinical assessment. *Id*.

[7] The administrative law judge noted Dr. Miller served as "an Assistant Clinical Professor of Radiology at the College of Physicians and Surgeons of Columbia University." Decision and Order at 32-33. He also noted Dr. Miller is "the only physician who submitted a written report summarizing his interpretation." *Id*. at 33.

interpreted these x-rays as positive for complicated pneumoconiosis and Dr. Adcock interpreted them as negative. The administrative law judge concluded the preponderance of the x-ray evidence did not establish complicated pneumoconiosis.[8] Decision and Order at 31-33.

Under prong (b), *see* 20 C.F.R. §718.304(b), the administrative law judge considered the May 11, 2016 bronchoscopy report from Dr. Robinette, Claimant's treating physician. Dr. Robinette observed a "right perihilar mass/density with [coal workers' pneumoconiosis] (Black Lung)" but noted a "new diagnosis of renal cell cancer" necessitated confirmation after the bronchial washings were analyzed. Claimant's Exhibits 4, 7. Post-operatively Dr. Barlow, a pathologist, concluded the bronchial washings obtained from the right lower lobe were negative for malignancy. Claimant's Exhibit 4. The administrative law judge discounted Dr. Robinette's opinion on the issue of complicated pneumoconiosis because he "did not offer any opinion on [whether] the nodules would equate to a one centimeter or greater opacity on x-ray." Decision and Order at 35.

Under prong (c), *see* 20 C.F.R. §718.304(c), the administrative law judge considered three interpretations of two computed tomography (CT) scans taken on January 18, 2008, and April 27, 2016. Claimant's Exhibits 5, 7; Employer's Exhibit 1. Dr. Crum, a dually qualified radiologist, interpreted the January 18, 2008 CT scan as showing "a linear nodular 2.5 cm opacity" in the posterior right lung which, "given the background of small opacities[,] is consistent with complicated pneumoconiosis."[9] Claimant's Exhibit 5. Dr. Basheda, a B reader, interpreted the January 18, 2008 CT scan as showing bilateral lung nodules in Claimant's lung fields and concluded the right lower lobe nodule was most consistent with old granulomatous disease. Employer's Exhibit 1. Noting evidence of "mild emphysematous changes," however, Dr. Basheda stated coal workers' pneumoconiosis "should be considered." *Id.* Dr. McMurray, whose credentials are unknown, interpreted the April 27, 2016 CT scan contained in Claimant's treatment records. Claimant's Exhibit 7. He opined the largest lesion in Claimant's right lower lobe "extend[ed] over [the] length of at least 3.8 cm and transverse diameter 1.6 cm" and the

[8] Dr. Robinette interpreted two x-ray reports contained in the treatment records that do not show simple or complicated pneumoconiosis. Director's Exhibit 23.

[9] Dr. Crum described the lung parenchyma as showing bilateral solid and "ground glass appearing ill-defined nodules primarily distributed within the upper and middle lobes." Claimant's Exhibit 5. Noting there are nodular densities in Claimant's lower lobes consistent with pneumoconiosis, Dr. Crum's final diagnosis overall was complicated pneumoconiosis. *Id.*

largest lesion in the left upper lobe "measured at least 19 mm." *Id*. In addition, he diagnosed mild emphysema and stated that pneumoconiosis should be considered. *Id.* While the administrative law judge accorded greater weight to Dr. Crum's CT scan interpretation based on his superior radiological qualifications, he found the CT scan evidence did not establish complicated pneumoconiosis because "none of the physicians made the requisite equivalency determination." Decision and Order at 35.

Weighing the x-ray, bronchoscopy, and CT scan evidence together, the administrative law judge found Claimant failed to prove he has complicated pneumoconiosis and thus failed to invoke the irrebuttable presumption of total disability due to pneumoconiosis. Decision and Order at 35.

The administrative law judge erred in discounting the bronchoscopy and CT scan evidence. *See* Director's Letter Brief at 3-4. The administrative law judge stated "*a medical expert* must provide an 'equivalency determination' if diagnosing complicated pneumoconiosis under 20 C.F.R. §718.304(b) or (c)." Decision and Order at 34 (emphasis added). Because no physician opined the lesion observed on Claimant's CT scan and subsequently biopsied by Dr. Robinette would appear on x-ray as greater than one centimeter, the administrative law judge concluded the CT scan and bronchoscopy evidence did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(b), (c). *Id*. at 35. The Fourth Circuit requires, however, that *the administrative law judge* perform equivalency determinations based on the medical evidence of record. *Blankenship*, 177 F.3d at 243 (4th Cir. 1999). Thus the absence of a specific statement of equivalency by a physician is not a bar to establishing complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 258 (while a physician who identified a 1.7 cm lesion on biopsy did not provide an equivalency determination, there was "no reason to believe that nodules of 1.7 centimeters would not produce x-ray opacities greater than one centimeter"); *see also Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 364-365 (4th Cir. 2006) (diagnosis of a "massive" opacity "becomes a proxy for the tissue mass characteristic of complicated pneumoconiosis" and satisfies the "statutory ground for application of the presumption").

Further, the record contains evidence that could support an equivalency determination which the administrative law judge overlooked. Specifically, in finding there was no evidence that the large lesion in Claimant's right lung, seen on his CT scans and subsequently biopsied by Dr. Robinette,[10] would appear on x-ray as greater than one centimeter, the administrative law judge failed to adequately consider the physicians'

[10] Dr. Robinette explained he performed the May 11, 2016 diagnostic bronchoscopy to determine the cause of the right hilar density seen on prior x-rays and the April 27, 2016 CT scan. Claimant's Exhibit 7.

comments in the x-ray reports[11] or the physicians' depositions.[12] As the Director asserts, while they disagree as to its cause, "virtually all of the physicians" agreed the lesion in Claimant's right middle to lower lung appears on x-ray as greater than one centimeter.[13] *See Scarbro*, 220 F.3d at 258 (where a physician did not provide an equivalency determination for a lesion seen pathologically, an earlier x-ray showing opacities greater than one centimeter in diameter provided persuasive evidence that the miner's lesions identified on biopsy did in fact show as opacities of that size); Director's Letter Brief at 4; Director's Exhibits 21, 22; Claimant's Exhibit 1; Employer's Exhibits 2, 7, 8.

The administrative law judge also failed to adequately consider "other relevant evidence" relating to the cause of the large lesions identified in Claimant's right lung. *See* 20 C.F.R. §718.304(c); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 287 (4th Cir. 2010); *Lester v. Director, OWCP*, 993 F.2d 1143, 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,

[11] The radiologists' narrative comments have a direct bearing on whether the abnormalities appearing on the chest x-ray are a manifestation of a "chronic dust disease," as is necessary for a finding of complicated pneumoconiosis, or the result of another disease process. *See* 20 C.F.R. §718.304.

[12] The administrative law judge summarized this evidence but failed to consider it in determining whether complicated pneumoconiosis is established at 20 C.F.R. §718.304(a)-(c).

[13] In her report reading the April 16, 2014 x-ray, Dr. DePonte noted an "[e]longate vertically oriented 5.5 x 1.2 cm opacity" located in Claimant's right middle to lower zone "with adjacent patchy density" that "may represent pleural parenchymal lesion." Claimant's Exhibit 1. Dr. Wolfe noted the April 16, 2014 x-ray showed "Ill-defined and somewhat nodular opacity about 3.0 x 5.0 cm laterally at right base. Possible pneumonia but consider tumor." Director's Exhibit 22. Dr. Miller noted the July 29, 2015 x-ray showed large opacities "greater than five centimeters that are consistent with complicated pneumoconiosis (B)." Director's Exhibit 21. Dr. Wolfe noted the July 29 2015 x-ray showed "pulmonary nodules or irregular pleural thickening in right upper lung zone 1.3 cm and in right lower lung zone 4.5 cm and 1.0 cm." Director's Exhibit 22. Although Dr. Adcock did not specify a size of the opacities he found on Claimant's April 14, 2016, April 20, 2016, and February 22, 2018 x-rays, he identified a "non-volumetric opacity of the lateral lower right hemithorax" in the comments sections of his reports. Employer's Exhibits 2, 7, 8. Further, in his deposition, Dr. Fino testified Claimant has an abnormality in the middle portion of his right lung that would probably measure two centimeters. Employer's Exhibit 10 at 16-17.

1-33-34 (1991) (en banc); Decision and Order at 12-27; Director's Exhibit 24; Claimant's Exhibit 7. Most importantly, he did not consider the extent to which Claimant's treatment records may undermine the opinions attributing his lung abnormalities to causes other than complicated pneumoconiosis.[14] Director's Letter Brief at 5. Specifically, the opinions of Drs. Wolfe and Fino that Claimant's right lung lesion may be a tumor or malignancy are contrary to the results of the 2016 bronchoscopy and bronchial washing that confirmed the presence of coal workers' pneumoconiosis and was negative for malignancy.[15] Employer's Exhibit 7 at 4; Claimant's Exhibit 4.

An administrative law judge must examine all the evidence on the issue of complicated pneumoconiosis, *i.e.*, evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve any conflicts, and render findings of fact. *See Cox*, 602 F.3d at 287; *Lester*, 993 F.2d at 1145-46; *Gollie*, 22 BLR at 1-311; *Melnick*, 16 BLR at 1-33-34. In view of the foregoing, we vacate the administrative law judge's finding that Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304 and remand the case for further consideration of all the relevant evidence in accordance with the Administrative Procedure Act (APA).[16] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). On remand, the administrative law judge must critically examine all the relevant medical evidence to determine whether Claimant affirmatively establishes the presence of complicated pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304(a)-(c).

[14] The administrative law judge also did not consider at 20 C.F.R. §718.304(c) that Dr. Ajjarapu diagnosed complicated pneumoconiosis, Dr. Robinette diagnosed occupational pneumoconiosis, and Drs. Fino and Basheda opined Claimant does not suffer from the disease. Director's Exhibit 24, 29; Claimant's Exhibit 7; Employer's Exhibits 7, 9, 10.

[15] Drs. Fino, Wolfe, and Adcock also posit the large lesions may be due to pneumonia, infectious disease, old granulomatous disease, or rheumatoid arthritis. Director's Exhibit 22; Employer's Exhibits 2, 7, 10. The administrative law judge may consider on remand whether the evidence of record supports these alternative etiologies. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 287 (4th Cir. 2010).

[16] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption, claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant evidence supporting total disability against all contrary relevant evidence. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-20-21 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The administrative law judge correctly found no qualifying[17] pulmonary function studies or arterial blood gas studies of record. Decision and Order at 37-38; Director's Exhibits 23, 25, 29; Employer's Exhibit 4-7. We therefore affirm his findings that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i), (iii). *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208 (4th Cir. 2000).

Next, the administrative law judge correctly found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 38. Consequently, we affirm his finding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

[17] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

Pursuant to 20 C.F.R §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Ajjarapu,[18] Fino,[19] and Basheda.[20] Dr. Ajjarapu opined Claimant is totally disabled, while Drs. Fino and Basheda opined he is not. Decision and Order at 38-41; Director's Exhibits 24, 29; Employer's Exhibit 7.[21] The administrative law judge permissibly accorded little weight to Dr. Ajjarapu's opinion because she relied, in part, on "a single x-ray" showing complicated pneumoconiosis, despite her contrary conclusion that Claimant's normal pulmonary function studies and arterial blood gas studies demonstrated he "may be able to work." Decision and Order at 39; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532-34 (4th Cir. 1998); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753 (4th Cir. 1999); *Lane v. Union Carbide Corp.*, 105 F.3d 166 (4th Cir. 1977) (whether a medical opinion is reasoned is a question for the trier of fact); Director's Exhibit 29. Further, he permissibly found Dr. Ajjarapu's opinion that Claimant should not return to his coal mine work constituted a recommendation against further coal dust exposure, which is not tantamount to a determination of total respiratory disability at Section 718.204(b)(2)(iv). *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 567 (6th Cir. 1989); *see also Migliorini v. Director, OWCP*, 898 F.2d 1292, 1296-1297 (7th Cir.

[18] In a report dated July 29, 2015, Dr. Ajjarapu opined that "because of his chest x-ray findings," Claimant is "totally and completely disabled and he should not work in the mines." Director's Exhibit 29. She further opined, "[b]ased on spirometry and blood gases, he may be able to work, but I would strongly advise him not to work in the mines." *Id*.

[19] In a report dated March 13, 2018, Dr. Fino opined that Claimant has a mild respiratory impairment, but is "neither partially nor totally disabled from returning to his last mining job or a job requiring similar effort." Employer's Exhibit 7. Dr. Fino testified that while Claimant's pulmonary function study demonstrated a mild reduction in diffusion, he is able to perform his usual coal mine employment from a pulmonary standpoint. Employer's Exhibit 10 at 9-13, 17-18.

[20] In a report dated June 18, 2016, Dr. Basheda observed "very mild chronic airway obstruction" that has resulted in no significant pulmonary impairment. Director's Exhibit 24. He opined Claimant is able to perform his last coal mine work from a pulmonary standpoint. *Id*. During his April 4, 2018 deposition, Dr. Basheda testified that even though Claimant exhibited "very mild" airway obstruction occasionally on his pulmonary testing, he retained the pulmonary capacity to return to his usual coal mine work. Employer's Exhibit 9 at 11-13, 16-17.

[21] Dr. Robinette's treatment records do not contain a total disability assessment. Claimant's Exhibit 7.

1990), *cert. denied*, 498 U.S. 958 (1990); Decision and Order at 39. As the administrative law judge permissibly discounted Dr. Ajjarapu's opinion, the only medical opinion of record that could support a finding of total disability, we affirm his finding that Claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2)(iv).[22] *See Lane*, 105 F.3d 166, 171, 21 BLR 2-34, 2-42; Decision and Order at 41.

We also affirm, as supported by substantial evidence, the administrative law judge's finding that the evidence as a whole did not establish total disability at 20 C.F.R. §718.204(b)(2). *See Fields*, 10 BLR at 1-21; *Shedlock*, 9 BLR at 198; Decision and Order at 41. As Claimant failed to establish he has a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's finding that he did not invoke the Section 411(c)(4) presumption or establish entitlement at 20 C.F.R. Part 718.

Remand Instructions

On remand, the administrative law judge must first reconsider whether the x-ray evidence establishes complicated pneumoconiosis under 20 C.F.R. §718.304(a). He must consider all relevant evidence regarding the x-rays, including the comments sections of the x-rays and the physicians' depositions. *See Melnick*, 16 BLR at 1-37. He should also explain his credibility determinations in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165. The administrative law judge must next reconsider the bronchoscopy evidence under 20 C.F.R. §718.304(b) and all other relevant evidence at 20 C.F.R. §718.304(c), including Claimant's CT scans, medical opinions, and treatment records. He must perform an equivalency determination in evaluating the relevant medical evidence under 20 C.F.R. §718.304(b) and (c). *See Scarbro*, 220 F.3d at 256; *Blankenship*, 177 F.3d at 243. Additionally, he should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). The administrative law judge must then weigh together the evidence at subsections (a)-(c) before determining whether Claimant has met his burden of proving he has complicated pneumoconiosis by a preponderance of the evidence. *See Scarbro*, 220 F.3d at 256, 22 BLR at 2-101; *Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Melnick*, 16 BLR at 1-3. If Claimant establishes complicated pneumoconiosis, the administrative law judge must determine whether the complicated

[22] We need not address Employer's assertion that the administrative law judge erred in weighing Dr. Fino's and Dr. Basheda's opinions that Claimant does not have a totally disabling respiratory impairment because they do not assist him in satisfying his burden to establish total disability. Decision and Order at 39-41; Director's Exhibit 24; Employer's Exhibits 7, 9, 10.

pneumoconiosis arose out of Claimant's coal mine employment at 20 C.F.R. §718.203,[23] before concluding he is entitled to the irrebuttable presumption.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[23] As we affirm the finding that Claimant has 37.16 years of coal mine employment, he is entitled to the rebuttable presumption his pneumoconiosis arose out of his coal mine employment. 30 U.S.C. §921(c)(1); 20 C.F.R. §718.203(b).