U.S. Department of Labor

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

BRB No. 21-0136 BLA

RINNIE RATLIFF	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
R & H COAL COMPANY	)	
	)	DATE ISSUED: 11/29/2022
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Order Vacating and Reissuing Decision and Order of Carrie Bland, District Chief Administrative Law Judge, United States Department of Labor.

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

Michael A. Pusateri and Brian D. Straw (Greenberg Traurig LLP), Washington, D.C., for Employer.

Olgamaris Fernandez (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Carrie Bland's Order Vacating and Reissuing Decision and Order[1] awarding benefits (2017-BLA-05714) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a claim filed on March 8, 2016.

The ALJ credited Claimant with 10.95 years of coal mine employment and found he established complicated pneumoconiosis. Thus, she found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. She also found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203, and awarded benefits.

On appeal, Employer argues the ALJ lacked the authority to hear and decide the case because she was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II §2, cl. 2.[2] It further asserts the removal provisions applicable to the ALJ render her appointment unconstitutional. On the merits, Employer also challenges the ALJ's finding that Claimant established complicated pneumoconiosis.[3]

---

[1] The ALJ issued a Decision and Order Awarding Benefits on May 20, 2020; however, the parties did not receive the decision. Decision and Order at 1. In response to Employer's Motion to Vacate and Set Aside for Lack of Service, the ALJ vacated her May 20, 2020 Decision and Order and reissued it on November 19, 2020. *Id.* at 1-2.

[2] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[3] We affirm, as unchallenged, the ALJ's finding that simple clinical pneumoconiosis is established. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 26.

Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), also filed a response, urging rejection of Employer's constitutional challenges. Employer replied to Claimant's and the Director's briefs, 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).

Appointments Clause

Employer urges the Board to vacate the award and remand the case to be heard by a different, constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018).[5] Employer's Brief at 12-17; Employer's Reply Brief at 1-3. It acknowledges the Secretary of Labor (Secretary) ratified the prior appointments of all sitting Department of Labor (DOL) ALJs on December 21, 2017,[6] but maintains the

[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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 21.

[5] *Lucia* involved a challenge to the appointment of an ALJ at the Securities and Exchange Commission (SEC). The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)). The Department of Labor (DOL) has conceded that the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

[6] The Secretary of Labor (Secretary) issued a letter to the ALJ on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

ratification was insufficient to cure the constitutional defect in the ALJ's prior appointment. Employer's Brief at 13-16.

The Director argues the ALJ had the authority to decide this case because the Secretary's ratification brought the appointment into compliance with the Appointments Clause and the ALJ took no action prior to that date other than issuing the "purely administrative" Notice of Hearing.[7] Director's Brief at 4-7. We agree with the Director.

An appointment by the Secretary need only be "evidenced by an open, unequivocal act." Director's Brief at 6 (quoting *Marbury v. Madison*, 5 U.S. 137, 157 (1803)). Further, ratification "can remedy a defect" arising from the appointment of an official when an agency head "has the power to conduct an independent evaluation of the merits [of the appointment] and does so." *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 371 (D.C. Cir. 2017) (internal quotations omitted); *see also McKinney v. Ozburn-Hessey Logistics, LLC*, 875 F.3d 333, 338 (6th Cir. 2017). Ratification is permissible so long as the agency head: 1) had at the time of ratification the authority to take the action to be ratified; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre*, 857 F.3d at 372; *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 603 (3d Cir. 2016); *CFPB v. Gordon*, 819 F.3d 1179, 1191 (9th Cir. 2016). Under the "presumption of regularity," courts presume that public officers have properly discharged their official duties, with "the burden shifting to the attacker to show the contrary." *Advanced Disposal*, 820 F.3d at 603 (citing *Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001)).

Congress has authorized the Secretary to appoint ALJs to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105. Under the presumption of regularity, we therefore presume the Secretary had full knowledge of the decision to be ratified and made a detached and considered affirmation. *Advanced Disposal*, 820 F.3d at

---

Secretary's December 21, 2017 Letter to ALJ Bland.

[7] The ALJ issued her Notice of Hearing and Pre-Hearing Order on November 7, 2017. The Notice informed the parties of the date of the hearing, set time limits for completion of discovery and submission of evidence, provided general advice to parties proceeding without counsel, and addressed other routine hearing matters. *See* Nov. 7, 2017 Notice of Hearing and Pre-Hearing Order. Thus, issuance of the Notice alone did not involve any consideration of the merits, nor could it color the ALJ's consideration of the merits of this case; it simply reiterated the statutory and regulatory requirements governing the hearing procedures. *Noble v. B & W Res., Inc.*, 25 BLR 1-267, 1-271-72 (2020). Therefore, this action taken prior to ratification does not require remand.

603. Moreover, the Secretary did not generally ratify the appointment of all ALJs in a single letter. Rather, he specifically identified ALJ Bland and gave "due consideration" to her appointment.[8] Secretary's December 21, 2017 Letter to ALJ Bland. The Secretary further acted in his "capacity as head of [DOL]" when ratifying the appointment of Judge Bland "as an [ALJ]." *Id*.

Employer generally asserts the Secretary's ratification did not involve "any genuine, let alone thoughtful, consideration," but does not allege the Secretary had no "knowledge of all material facts" when he ratified ALJ Bland's appointment. Employer's Brief at 16. It therefore has not overcome the presumption of regularity. *Advanced Disposal*, 820 F.3d at 603-04 (lack of detail in express ratification is not sufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340. The Secretary thus properly ratified the ALJ's appointment. *See Edmond v. United States*, 520 U.S. 651, 654-66 (1997) (appointment of civilian members of the United States Coast Guard Court of Criminal appeals were valid where the Secretary of Transportation issued a memorandum "adopting" assignments "as judicial appointments of [his] own"); *Advanced Disposal*, 820 F.3d at 604-05 (National Labor Relations Board's retroactive ratification appointment of a Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] *nunc pro tunc*" all its earlier actions was proper).

We further reject Employer's argument that Executive Order 13843, which removes ALJs from the competitive civil service, supports its Appointments Clause argument because incumbent ALJs remain in the competitive service. Employer's Brief at 18-21. The Executive Order does not state that the prior appointment procedures were impermissible or violated the Appointments Clause. It also affects only the government's internal management and, therefore, does not create a right enforceable against the United States and is not subject to judicial review. *See Air Transport Ass'n of Am. v. FAA*, 169 F.3d 1, 8-9 (D.C. Cir. 1999). Moreover, Employer has not explained how the Executive Order undermines the Secretary's ratification of ALJ Bland's appointment, which we have held constituted a valid exercise of his authority, thereby bringing her appointment into compliance with the Appointments Clause.

[8] While Employer asserts the Secretary's ratification letter was signed with "an autopen," Employer's Brief at 15, this does not render the appointment invalid. *See Nippon Steel Corp. v. Int'l Trade Comm'n*, 239 F. Supp. 2d 1367, 1373, 1375 n.14 (Ct. Int'l Trade 2002) (autopenned signing of the Recess Appointment Order satisfies the requirement that an appointment be evidenced by an "open and unequivocal act").

Thus, we reject Employer's argument that this case should be remanded to the Office of Administrative Law Judges for a new hearing before a different ALJ.

Removal Provisions

Employer also challenges the constitutionality of the removal protections afforded ALJs. Employer's Brief at 17-21; Employer's Reply at 3. It generally argues the removal provisions in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, relying on Justice Breyer's separate opinion and the Solicitor General's argument in *Lucia*. Employer's Brief at 18-20; Employer's Reply at 3-5. It also relies on the Supreme Court's holdings in *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010), and *Seila Law v. CFPB*, 591 U.S. , 140 S. Ct. 2183 (2020), as well as the United States Court of Appeals for the Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), *vacated*, 594 U.S. , 141 S. Ct. 1970 (2021). Employer's Brief at 17, 20-21. For the reasons set forth in *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 3-5 (Oct. 18, 2022), the Board rejects Employer's arguments.

Length of Coal Mine Employment

Employer argues the ALJ erred in finding Claimant established more than ten years of coal mine employment. Employer's Brief at 29-32. However, in its post-hearing brief to the ALJ, Employer specifically argued that Claimant's testimony and the record supported a finding that Claimant worked "approximately 11.4 years." Employer's Closing Brief at 8. Because Employer conceded Claimant had greater than ten years of coal mine employment before the ALJ, we will not address its allegation of error. *See Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39 F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ); *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 4 (Oct. 25, 2022) (en banc) (same); *Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-4-7 (1995) (cannot raise argument before the Board for the first time on appeal). Thus, we affirm the ALJ's finding that Claimant established 10.95 years of coal mine employment and is entitled to the presumption at 20 C.F.R. §718.203(b) that his pneumoconiosis arose out of coal mine employment. Decision and Order at 11, 27.

Section 411(c)(3) Presumption – 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 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).

The ALJ found the x-ray evidence established complicated pneumoconiosis and the interpretations of the computed tomography (CT) scans were in equipoise on the issue.[9] 20 C.F.R. §718.304(a), (c); Decision and Order at 13-15, 22-25, 27-32. Weighing the evidence together, she found the evidence establishes complicated pneumoconiosis. Decision and Order at 32.

X-Ray Evidence

The ALJ considered eleven interpretations of five x-rays dated May 10, 2016, August 24, 2016, July 18, 2017, December 23, 2017, and December 29, 2017. Decision and Order at 14. All the physicians who read these x-rays are dually-qualified as B readers and Board-certified radiologists. *Id.* at 28. Further, all the physicians agreed that simple pneumoconiosis is present, but disagreed regarding the presence of complicated pneumoconiosis. *Id.* at 14, 27. Drs. DePonte and Crum interpreted the May 10, 2016 x-ray as positive for complicated pneumoconiosis, while Dr. Wolfe found no large opacities. Director's Exhibits 9, 14-15. Dr. Crum interpreted the August 24, 2016 x-ray as positive for complicated pneumoconiosis, while Dr. Adcock read it as negative. Claimant's Exhibit 1; Employer's Exhibit 3. Drs. Crum and Adcock each provided conflicting interpretations of the remaining three x-rays. Claimant's Exhibits 4-5, 9; Employer's Exhibit 1, 9-10.

The ALJ initially observed that a majority of the x-ray interpretations (six of eleven) were positive for complicated pneumoconiosis but that the practice of simply "counting heads" is discouraged. Decision and Order 28. However, she also acknowledged that ALJs may take into account factors beyond numerical superiority, such as the physicians' qualifications and, as here, that all the interpretations were conducted by dually-qualified Board-certified radiologists and B readers. *Id.* She also discussed the conflicting readings of each x-ray, finding all but the earliest x-ray to be in equipoise. *Id.* at 29. Ultimately, however, her sole reason for finding complicated pneumoconiosis on x-ray is that she gave more weight to Dr. DePonte's positive interpretation for complicated pneumoconiosis

[9] The record contains no biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 13.

because "it was made on behalf of the [d]istrict [d]irector, rather than an interested party," and therefore "carries a greater degree of credibility." *Id.* at 28, 30.

We agree with Employer's argument that the ALJ erred in according determinative weight to Dr. DePonte's positive x-ray reading solely because she conducted the readings as part of Claimant's DOL-sponsored complete pulmonary evaluation. Employer's Brief at 23. Physicians who provide opinions on behalf of the DOL cannot be accorded greater weight due to their perceived impartiality, absent conclusive evidence that other physicians of record are biased and that the DOL's expert is independent. *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-35-36 (1991) (en banc). Because the ALJ did not identify any evidence supporting her determination that Dr. DePonte is an impartial expert and her reading "carries a greater degree of credibility," we vacate the ALJ's determination to assign determinative weight to Dr. DePonte's positive x-ray reading. Decision and Order at 29.

Moreover, as Employer argues, it is unclear how the ALJ weighed the conflicting readings for each x-ray. Initially, the ALJ provided no specific finding regarding the May 10, 2016 x-ray and thus it is unclear what weight she would accord the readings of this x-ray absent her credibility determination addressed above. *Id.* In addition, when considering the July 18, 2017 and December 29, 2017 x-rays, the ALJ indicated Dr. Crum did not provide specific information regarding the size or location of the opacities seen on the x-rays and thus gave those x-rays less weight due to "lack of specificity."[10] *Id.* The ALJ, however, did not explain how this finding, in conjunction with her finding that Drs. Crum and Adcock are equally qualified, factor into her conclusion that the readings of these two x-rays were in equipoise. She also did not explain how these findings factored into her weighing of the x-ray evidence as a whole. Because we are unable to discern the ALJ's reasoning in weighing the x-ray evidence, we vacate her determinations. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016) (the court cannot guess at what the ALJ meant to say but did not).

Consequently, we vacate the ALJ's finding that Claimant established complicated pneumoconiosis under 20 C.F.R. §718.304(a). Decision and Order at 30.

[10] Conversely, the ALJ noted Dr. Crum did specify the location of the opacities he observed on the May 10, 2016, August 24, 2016, and December 23, 2017 x-rays but did not indicate what, if any, weight she gave to Dr. Crum's opinion on that basis. Decision and Order at 29.

CT Scan Evidence

The ALJ considered four CT scan reports by Dr. Ramakrishnan contained in Claimant's treatment records, dated February 21, 2012, January 21, 2015, August 05, 2015, and January 28, 2016, as well as Dr. Adcock's interpretation of the January 28, 2016 CT scan. Decision and Order at 32.

Dr. Ramakrishnan found "moderate upper lobe nodular lung disease" on the February 21, 2012 CT scan. Claimant's Exhibit 6. In the January 21, 2015 CT scan report, he noted findings "suggestive of pneumoconiosis" and a right upper lobe nodule that had become "slightly more coalescent than the previous study," measuring ten millimeters. *Id.* He noted similar findings on the August 5, 2015 CT scan, indicating nodular changes bilaterally consistent with pneumoconiosis and a twelve-millimeter nodule in the right upper lobe "suggesting [a] coalescent fibrotic nodule." *Id.* Finally, in the January 28, 2016 CT scan report, he again noted upper lobe nodular changes "similar to the prior examination," consistent with pneumoconiosis. *Id.* Meanwhile, Dr. Adcock interpreted the January 28, 2016 CT scan as consistent with simple pneumoconiosis, but negative for complicated pneumoconiosis. Employer's Exhibit 5.

The ALJ found Dr. Ramakrishnan's readings to be consistent with a finding of complicated pneumoconiosis. Decision and Order at 30-31. Weighing the physicians' readings together, the ALJ accorded them equal weight[11] and thus found the readings of the CT scan evidence were in equipoise as to complicated pneumoconiosis. *Id.* at 31-32. She found that while the CT scan evidence does not establish complicated pneumoconiosis, it does not "rule out" that it may have developed at a later date. *Id.* at 31.

Employer argues the ALJ erred because Dr. Ramakrishnan did not specify that the opacities he identified were consistent with complicated pneumoconiosis, and the ALJ did not determine whether the nodules that the doctor identified would be equivalent to an opacity greater than one centimeter if seen on an x-ray. Employer's Brief at 27, 29. We agree.

To invoke the Section 411(c)(3) irrebuttable presumption, Claimant need only establish it is more likely than not he has a chronic lung condition that when diagnosed by other means such as a CT scan would appear as a Category A, B, or C opacity on x-ray. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, requires the ALJ to perform equivalency determinations based on her

[11] The ALJ appeared to give Dr. Adcock's opinion greater weight due to his credentials but found giving any additional weight on this basis "offset" by the fact that Dr. Ramakrishnan was able to review a series of CT scans. Decision and Order at 31.

evaluation of all the medical evidence of record. *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). 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.

Here, the ALJ noted the ten- and twelve-millimeter nodules that Dr. Ramakrishnan identified on the CT scans were in the same location as the large opacity that Drs. DePonte and Crum identified on x-ray. But the ALJ also stated there was no evidence of record that the nodules Dr. Ramakrishnan identified would be of an equivalent size as would appear on x-ray. Decision and Order at 30-31; 31 n.50. Given the ALJ's conflicting findings regarding the equivalency requirement, and Dr. Ramakrishnan's lack of providing a specific statement that the opacities constituted complicated pneumoconiosis, we vacate the ALJ's finding and remand the case for the ALJ to reconsider whether Dr. Ramakrishnan's CT scan readings support a finding of complicated pneumoconiosis and to explain the bases for her conclusion. 20 C.F.R. §718.304(c); *see Addison*, 831 F.3d at 256-57; *Scarbro*, 220 F.3d at 256, 258; *Blankenship*, 177 F.3d at 243.

Medical Opinions

Employer further argues the ALJ failed to properly consider and weigh the medical opinions under 20 C.F.R. §718.304(c). Employer's Brief at 24-27. We agree.

The ALJ briefly addressed Drs. Rosenberg's and Fino's opinions that Claimant does not have complicated pneumoconiosis in conjunction with her discussion of the CT scan evidence, but did not weigh the medical opinion evidence with the remaining evidence. Decision and Order at 31-32; *Melnick*, 16 BLR at 1-33. Moreover, the ALJ's findings regarding their opinions were influenced by her conclusions regarding the CT scan evidence, which we have vacated.

Consequently, we vacate the ALJ's findings that Claimant established complicated pneumoconiosis and thus the award of benefits. 20 C.F.R. §718.304; Decision and Order at 32.

Remand Instructions

On remand, the ALJ first must reconsider the x-ray evidence to determine if it is sufficient to support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a). The ALJ must conduct a quantitative and qualitative analysis of the x-ray readings and adequately explain how she resolves the conflict in the evidence in compliance with the

APA.[12] *Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989); *see Addison*, 831 F.3d at 256-57; *Cox*, 602 F.3d at 283.

The ALJ must also reconsider whether the CT scans and medical opinions are sufficient to establish complicated pneumoconiosis at 20 C.F.R. §718.304(c). She must reconsider Dr. Ramakrishnan's CT scan reports and determine whether they are sufficient to establish complicated pneumoconiosis, making the required equivalency determination, and weigh them with Dr. Adcock's CT scan interpretation. 20 C.F.R. §718.304(c); *Scarbro*, 220 F.3d at 256, 258; *Blankenship*, 177 F.3d at 243. In addition, she must reconsider the medical opinion evidence in light of her x-ray and CT scan findings, 20 C.F.R. §718.304(c), addressing 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 Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). She must weigh together all the relevant evidence before determining whether Claimant has invoked the Section 411(c)(3) presumption. 20 C.F.R. §718.304; *Melnick*, 16 BLR at 1-33.

If the ALJ finds Claimant establishes complicated pneumoconiosis,[13] she may again find Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and established entitlement to benefits. 20 C.F.R. §§718.203, 718.304. If, however, the ALJ finds Claimant cannot invoke the irrebuttable presumption, she must consider whether he can establish entitlement to benefits under 20 C.F.R. Part 718 absent the presumption. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204.

[12] The Administrative Procedure Act requires that every adjudicatory decision 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).

[13] We affirmed the ALJ's finding that Claimant established more than ten years of coal mine employment and thus could invoke the presumption that his pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b). The ALJ found the evidence insufficient to rebut the presumption, noting that while Dr. Rosenberg indicated it is "possible" Claimant has rheumatoid lung disease, this comment is insufficient to overcome the presumption. Decision and Order at 27 n.42. Employer does not contest this credibility finding or point to any other evidence that would rebut the presumption; thus, we affirm the ALJ's finding. *Skrack*, 6 BLR at 1-711.

Accordingly, we affirm in part and vacate in part the ALJ's Order Vacating and Reissuing [the] Decision and Order awarding benefits, and remand the case for further consideration consistent with this decision.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge