

BRB No. 06-0453 BLA

RONALD D. MILLER)	
)	
Claimant-Respondent)	
)	
v.)	
)	
MARFORK COAL COMPANY)	DATE ISSUED: 04/30/2007
)	
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 William S. Colwell, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (04-BLA-5373) of Administrative Law Judge William S. Colwell awarding benefits on a claim filed on October 31, 2002 pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge credited claimant with twenty-two years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge also found the evidence sufficient to establish the presence of complicated pneumoconiosis and thereby sufficient

to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence is sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a), (c). Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.¹

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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Employer contends that the administrative law judge erred in finding the evidence sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a) and (c). Section 411(c)(3)(A) of the Act, 30 U.S.C. §921(c)(1), as implemented by 20 C.F.R. §718.304(a) of the regulations, provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (A) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) 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, is a condition which would yield results equivalent to (A) or (B). 30 U.S.C. §921(c)(3)(A); 20 C.F.R. §718.304(a). The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption found at 20 C.F.R. §718.304. The administrative law judge must weigh together all of the evidence relevant

¹ The administrative law judge's length of coal mine employment finding and his finding that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

to the presence or absence of complicated pneumoconiosis and determine whether the claimant has established the presence of complicated pneumoconiosis by a preponderance of the evidence. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(*en banc*). Additionally, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises,² 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 which 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 (4th Cir. 1999).

Employer contends that the administrative law judge erred in finding the evidence sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a). The administrative law judge considered the nine interpretations of four x-rays dated November 21, 2002,³ January 29, 2003, August 19, 2003 and January 19, 2004. Drs. Patel, Cappiello, Scott and Wheeler, dually qualified B readers and Board-certified radiologists, read the November 21, 2002 x-ray.⁴ Dr. Patel classified the profusion of the small opacities on the November 21, 2002 x-ray as 1/2 and the large opacities as category A. Director’s Exhibit 15. Similarly, Dr. Cappiello classified the profusion of the small opacities on the November 21, 2002 x-ray as 2/3 and the large opacities as category A. Claimant’s Exhibit 1. Although Dr. Scott classified the profusion of the small opacities on the November 21, 2002 x-ray as 1/1, Dr. Scott classified the large opacities as category 0. Employer’s Exhibit 3. Dr. Scott also noted, “infiltrates upper lungs are mostly peripheral which is more compatible with [tuberculosis], unknown activity, than with silicosis although there could be a small

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because claimant’s last coal mine employment occurred in West Virginia. See Director’s Exhibits 1, 4, 6, 7; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

³ Although the administrative law judge referred to a *September* 21, 2002 x-ray, Director’s Exhibit 13, it is clear from the record and his listing of the x-ray evidence that he is actually discussing the *November* 21, 2002 x-ray. Director’s Exhibits 15, 16; Claimant’s Exhibit 1; Employer’s Exhibits 3, 4; Decision and Order at 6, 12.

⁴ Dr. Navani read the November 21, 2002 x-ray for quality purposes only. Director’s Exhibit 16.

component of the latter.” *Id.* Dr. Wheeler classified the profusion of the small opacities on the November 21, 2002 x-ray as 0/1 and the large opacities as category 0. Employer’s Exhibit 4. Dr. Wheeler also noted, “moderate small nodular infiltrates mainly in lateral periphery right mid lung and both upper lungs involving pleura compatible with granulomatous disease, [tuberculosis] or possible histoplasmosis, more likely than [coal workers’ pneumoconiosis] which typically is symmetrical and involves central mid and upper lungs and not the periphery.” *Id.* Dr. Wheeler additionally noted, “probable 4 x 2 cm mass or infiltrate in lateral [right upper lobe] between anterior ribs 2-3 more likely than [coal workers’ pneumoconiosis].” *Id.*

Dr. Daniel interpreted the January 29, 2003 x-ray as showing complicated pneumoconiosis and interstitial lung disease, but did not provide an ILO classification of any large opacities that he observed.⁵ Claimant’s Exhibit 2. Dr. Lintala interpreted the August 19, 2003 x-ray as showing coal workers’ pneumoconiosis with conglomerate masses in perihilar regions of both lungs that appear clear of active infiltrates.⁶ *Id.*

Dr. Willis, a dually qualified B reader and Board-certified radiologist, classified the profusion of the small opacities on the January 19, 2004 x-ray as 2/1. *Id.* Dr. Willis also noted that “[t]here is a large opacity in the right suprahilar region and coalescence in both upper lung zones of the small opacities.” *Id.* Dr. Wheeler classified the profusion of the small opacities on the January 19, 2004 x-ray as 0/1 and the large opacities as category 0. Employer’s Exhibit 2. Dr. Wheeler also noted, “6 x 3 cm mass lower lateral periphery [right upper lung] and ill defined 2 cm mass or infiltrate in lateral periphery [left upper lung] with possible tiny central calcification compatible with conglomerate [tuberculosis] or histoplasmosis.” *Id.* Dr. Wheeler further noted, “subtle small nodular infiltrates in lateral periphery upper lobes involving pleura compatible with [tuberculosis] or histoplasmosis more likely than [coal workers’ pneumoconiosis].” *Id.* The administrative law judge found that the preponderance of the x-ray evidence established the presence of complicated pneumoconiosis.

Initially, we will address employer’s assertion that the administrative law judge erred in discounting Dr. Wheeler’s x-ray findings of no complicated pneumoconiosis on the basis that Dr. Wheeler’s findings of no simple pneumoconiosis are contrary to the administrative law judge’s determination that the x-ray evidence is sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1). Before considering whether the evidence established the presence of complicated pneumoconiosis, the administrative law judge first addressed whether the evidence established the existence of simple pneumoconiosis. The administrative law judge’s inquiry was a correct one. Pursuant to

⁵ The radiological credentials of Dr. Daniel are not in the record.

⁶ The radiological credentials of Dr. Lintala are not in the record.

20 C.F.R. §718.304, the administrative law judge is required to examine all the evidence on the issue, namely, evidence of simple pneumoconiosis, complicated pneumoconiosis and no pneumoconiosis, resolve the conflicts, and make a finding of fact. *Melnick*, 16 BLR at 1-37; *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North American Coal Corp.*, 626 F.2d 1137, 2 BLR 2-45 (3d Cir. 1980).

In the present case, the administrative law judge rationally determined that because Dr. Wheeler's negative readings of the November 21, 2002 and January 19, 2004 x-rays were contrary to the weight of the x-ray evidence, the credibility of Dr. Wheeler's finding of no complicated pneumoconiosis on these x-rays was diminished. Decision and Order at 13. Because the administrative law judge acted within his discretion in discounting Dr. Wheeler's negative x-ray readings on the ground that they are contrary to his finding at Section 718.202(a)(1), we reject employer's assertion that the administrative law judge erred in discounting Dr. Wheeler's negative x-ray readings at Section 718.304(a). *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Next, we address employer's assertion that the administrative law judge should have accorded greater weight to the x-ray readings of Drs. Scott and Wheeler because of their superior credentials. Specifically, employer argues that in addition to being dually qualified B readers and Board-certified radiologists, Drs. Scott and Wheeler are professors of radiology and associated with the medical school of Johns Hopkins University. While an administrative law judge may accord greater weight to x-ray readings provided by physicians who are dually qualified as B readers and Board-certified radiologists, as well as professors of radiology, he is not required to do so. *See Melnick*, 16 BLR at 1-36-7. Thus, we reject employer's assertion that the administrative law judge should have accorded greater weight to the x-ray readings of Drs. Scott and Wheeler because of their credentials as professors of radiology. *Bateman v. Eastern Associated Coal Corp.*, 22 BLR 1-255, 1-261 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Melnick*, 16 BLR at 1-36-37.

Employer also asserts that the administrative law judge erred in substituting his opinion for that of the physicians. As discussed *supra*, Drs. Scott and Wheeler provided remarks about the other diseases they observed on the November 21, 2002 and January 19, 2004 x-rays. On his report interpreting the November 21, 2002 x-ray, Dr. Scott noted that the infiltrates in the upper lungs are more compatible with tuberculosis of unknown activity than with silicosis. Employer's Exhibit 3. Additionally, on his report interpreting the November 21, 2002 x-ray, Dr. Wheeler noted that the nodular infiltrates in the lateral periphery right mid lung and both upper lungs are more likely compatible with granulomatous disease, tuberculosis or possible histoplasmosis than coal workers' pneumoconiosis, which typically is symmetrical and involves central mid and upper

lungs. Employer's Exhibit 4. With regard to his report interpreting the January 19, 2004 x-ray, Dr. Wheeler noted the masses in the lower lateral periphery of the right upper lung and the lateral periphery of the left upper lung were compatible with conglomerate tuberculosis or histoplasmosis. Employer's Exhibit 2. Dr. Wheeler also noted that the subtle small nodular infiltrates in the lateral periphery of the upper lobes were more likely compatible with tuberculosis or histoplasmosis than coal workers' pneumoconiosis. *Id.*

In weighing the conflicting x-ray readings, the administrative law judge stated that "the opinions of those physicians who relied on tuberculosis as an alternative explanation must be discounted, because the [c]laimant's tuberculosis test was negative." Decision and Order at 14. The Board, however, has long held that the interpretation of the objective data is a medical determination for which an administrative law judge cannot substitute his own opinion. *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). Dr. Scott noted that the infiltrates he observed were most likely compatible with tuberculosis of unknown activity. Further, Dr. Wheeler noted that the infiltrates he observed were most likely compatible with granulomatous disease, tuberculosis or possible histoplasmosis. The administrative law judge failed to explain how the negative tuberculosis test ruled out all forms of tuberculosis, granulomatous disease, histoplasmosis or sarcoidosis. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Thus, we vacate the administrative law judge's finding that the evidence is sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a), and remand the case for further consideration of the x-ray evidence.

In addition, as argued by employer, we hold that the administrative law judge erred in finding that Dr. Willis's January 19, 2004 x-ray interpretation supported the November 21, 2002 x-ray readings of Drs. Patel and Cappiello. The administrative law judge stated that "[a]lthough this January 19, 2004 reading by Dr. Willis does not state a finding of complicated pneumoconiosis, his explanation concerning a large opacity adds further support to the readings of Drs. Patel and Cappiello." Decision and Order at 13. Drs. Patel and Cappiello classified the large opacities in the November 21, 2002 x-ray as category A. Director's Exhibit 15; Claimant's Exhibit 1. On his report interpreting the January 19, 2004 x-ray, Dr. Willis observed a large opacity in the right suprahilar region and coalescence in both upper lung zones of the small opacities. Claimant's Exhibit 2. After finding that Dr. Willis's x-ray reading supported the x-ray readings of Drs. Patel and Cappiello, the administrative law judge stated that "[c]laimant's treatment records also reveal readings by physicians who found [c]laimant to have complicated pneumoconiosis (Dr. Daniel) or conglomerate masses or progressive massive fibrosis (Drs. Lintala and Setliff) or a large opacity (Dr. Willis)." Decision and Order at 14. However, Dr. Willis did not classify the large opacities he observed in this x-ray in accordance with the ILO classification system as required under 20 C.F.R. §718.304(a). *See* 20 C.F.R. §§718.102, 718.304(a). Moreover, Drs. Daniel and Lintala did not classify the January 23, 2003 and August 19, 2003 x-rays in accordance with the ILO

classification system. Thus, on remand, the administrative law judge must reconsider the conflicting x-ray evidence in accordance with the standards set forth in 20 C.F.R. §718.304(a).⁷

Further, employer contends that the administrative law judge erred in finding the evidence sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(c).⁸ Specifically, employer asserts that the administrative law judge erred in weighing the CT scan evidence at Section 718.304(c). The administrative law judge considered the interpretations of the October 1, 2002 CT scan by Drs. Patel, Wheeler and Spagnolo. Dr. Patel opined that the soft tissue masses in both upper lobes are consistent with progressive massive fibrosis secondary to complicated pneumoconiosis. Director's Exhibit 11. In contrast, Dr. Wheeler opined that the masses in the upper lobes are not opacities of coal workers' pneumoconiosis. Employer's Exhibit 4. Similarly, Dr. Spagnolo opined that the larger densities in the upper lobes do not favor either simple or complicated pneumoconiosis. Employer's Exhibit 10. Based on his weighing of the conflicting interpretations of this CT scan, the administrative law judge found that Dr. Patel's CT scan reading outweighed the contrary CT scan readings of Drs. Wheeler and Spagnolo. The administrative law judge therefore found "the opinion of Dr. Patel sufficient to establish the existence of complicated pneumoconiosis." Decision and Order at 14. However, the administrative law judge did not consider whether the condition Dr. Patel diagnosed by CT scan would appear as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Scarbro*, 220 F.3d at 255, 22 BLR at 2-100; *Blankenship*, 177 F.3d at 243, 22 BLR at 2-561. Thus, we vacate the administrative law judge's finding that the evidence is sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(c), and remand the case for further consideration of the relevant medical evidence thereunder in accordance with *Scarbro* and *Blankenship*.

Employer additionally asserts that the administrative law judge erred in weighing the conflicting medical opinion evidence at Section 718.304(c). Specifically, employer asserts that the administrative law judge shifted the burden of proof to employer to establish that the large opacities are not due to coal dust exposure. The record consists of

⁷ When considering whether the evidence of record as a whole is sufficient to establish the existence of complicated pneumoconiosis, however, the administrative law judge should address the readings by Drs. Willis and Daniel and the treatment records. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(*en banc*).

⁸ The administrative law judge correctly found that there is no autopsy or biopsy evidence in the record. Decision and Order at 14. Thus, 20 C.F.R. §718.304(b) is not applicable in this case.

the opinions of Drs. Crisalli, Spagnolo, Mullins and Petsonk. Dr. Crisalli opined that claimant has simple coal workers' pneumoconiosis but does not have complicated pneumoconiosis. Employer's Exhibit 1. Dr. Spagnolo opined that claimant does not have pneumoconiosis. Employer's Exhibits 6, 11. Dr. Mullins opined that claimant's x-ray reading is consistent with coal dust exposure. Director's Exhibit 12. Dr. Mullins also opined that claimant had bilateral upper lobe masses related to progressive massive fibrosis or a tumor. *Id.* In a letter for the National Institute of Occupational Safety and Health, Dr. Petsonk informed claimant that a recent x-ray shows category A complicated pneumoconiosis. Director's Exhibit 11. Taking into consideration his review of the x-ray and CT scan interpretations, the administrative law judge found that the opinions of Drs. Crisalli and Spagnolo are not persuasive. The administrative law judge stated that "[w]hile those physicians who find complicated pneumoconiosis to be absent opine that tuberculosis, sarcoidosis, [sic] histoplasmosis may be the cause of [c]laimant's abnormal x-ray and CT scan findings, they are unable to pinpoint a diagnosis and [c]laimant's negative tuberculosis test runs contrary to that explanation, as does his lack of symptoms generally associated with those diseases." Decision and Order at 14.

In *Lester*, the Fourth Circuit court emphasized that "claimant retains the burden of proving the existence of the disease" complicated pneumoconiosis. *Lester*, 993 F.3d at 1146, 17 BLR at 2-118. Here, the administrative law judge's analysis of the evidence runs counter to the Fourth Circuit's holding in *Lester*. The administrative law judge implicitly required employer's medical experts to not only opine that claimant does not have complicated pneumoconiosis, but also to ascertain a definite etiology for the large opacities identified on x-ray and CT scan, in order to disprove the existence of complicated pneumoconiosis once claimant submitted x-ray findings of large opacities under Section 718.304(a). As discussed *supra*, the introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption at 20 C.F.R. §718.304(a), especially when conflicting x-ray evidence is presented. *Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999). Thus, on remand, the administrative law judge must reconsider the relevant medical evidence to determine whether claimant has met his burden of establishing the presence of complicated pneumoconiosis. *Lester*, 993 F.2d at 1145-6, 17 BLR at 2-117-8; *Melnick*, 16 BLR at 1-33.

Finally, employer argues that although the administrative law judge considered whether the opinions of Drs. Crisalli and Spagnolo diagnosed complicated pneumoconiosis, the administrative law judge erred in failing to address the doctors' opinions that claimant does not have a pulmonary or respiratory impairment, in weighing the evidence at 20 C.F.R. §718.304(c). The administrative law judge considered the opinions of Drs. Crisalli and Spagnolo with regard to the issue of complicated pneumoconiosis. However, the administrative law judge did not address the opinions of Drs. Crisalli and Spagnolo, that claimant does not have a pulmonary impairment, in

considering their opinions with regard to the absence of complicated pneumoconiosis. In his report, Dr. Crisalli opined that “it is unlikely that complicated coal worker’s pneumoconiosis is present in the presence of pulmonary function studies which show no obstruction to airflow and no restrictive defect.” Employer’s Exhibit 1. In his report, Dr. Spagnolo opined that claimant does not have a chronic dust disease of the lung and/or any respiratory or pulmonary impairment arising out of coal mine employment. Employer’s Exhibit 6. Dr. Spagnolo specifically stated that:

Although [claimant] has had sufficient exposure to coal dust to result in pneumoconiosis, it is my opinion that [claimant] does not have consistent physical findings or laboratory evidence of pneumoconiosis or any chronic dust disease of the lung caused by, significantly related to, substantially aggravated by coal dust exposure. My opinion in this case is based upon evaluations commented on above in this report, as well as multiple reports of chest radiographs and other laboratory evidence such as exercise testing, pulmonary function and arterial blood gas values.⁹

Employer’s Exhibit 6.

During a January 12, 2005 deposition, Dr. Spagnolo opined that claimant did not have simple or complicated pneumoconiosis. Employer’s Exhibit 11. Dr. Spagnolo’s opinion was based, in part, on his finding that claimant’s normal pulmonary function and arterial blood gas studies did not support a diagnosis of simple or complicated pneumoconiosis. *Id.*

A miner need not show that he suffers from a respiratory impairment in order to invoke the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. *Usury v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976) (recognizing that while complicated pneumoconiosis may be present without impairment, the disease “usually produces significant pulmonary impairment”). However, a physician may consider the absence of a respiratory impairment as one factor in ascertaining whether an x-ray diagnosis of complicated pneumoconiosis is appropriate. *Mullins*, 484 U.S. at 148, 11 BLR at 2-8 (recognizing that evidence regarding impairment may shed light on interpretation of x-ray).

Drs. Crisalli and Spagnolo explicitly mentioned their findings of no pulmonary impairment in connection with their opinions regarding the absence of complicated pneumoconiosis. Thus, because the administrative law judge did not consider the

⁹ Dr. Spagnolo noted that repeated spirometry and blood gas values have been normal. Employer’s Exhibit 6.

opinions of Drs. Crisalli and Spagnolo, that claimant lacked a pulmonary impairment, in determining whether the abnormalities seen on x-rays are complicated pneumoconiosis, the administrative law judge, on remand, must reconsider the opinions of Drs. Crisalli and Spagnolo insofar as they are relevant to determining whether claimant has met his burden of establishing the presence of complicated pneumoconiosis. *Lester*, 993 F.2d at 1145-6, 17 BLR at 2-117-8; *Melnick*, 16 BLR at 1-33.

In sum, on remand, the administrative law judge must first determine whether the relevant evidence in each category under Section 718.304(a) and (c) tends to establish the presence of complicated pneumoconiosis, and then he must weigh the evidence together before determining whether it is sufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304. *Lester*, 993 F.2d at 1145-6, 17 BLR at 2-117-8; *Melnick*, 16 BLR at 1-33.

If the administrative law judge finds the evidence sufficient to establish the presence of complicated pneumoconiosis and, thus, finds the evidence sufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304, then he must determine whether the evidence is sufficient to establish that the pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203. *Daniels Co. v. Mitchell*, 479 F.3d 321, BLR (4th Cir. 2007); 20 C.F.R. §§718.202(a), 718.203, 718.204.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge