BRB No. 09-0332 BLA

IMA JOE WADE (Widow of JAMES W. WADE)	)	
Claimant-Respondent	)	
v.	)	DATE ISSUED: 12/16/2009
NEW HIGNITE COAL COMPANY, INCORPORATED	)	
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 on Remand–Award of Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Steven A. Sanders (Appalachian Citizens Law Center, Inc.), Whitesburg, Kentucky, for claimant.

Ronald E. Gilbertson (K&L Gates LLP), Washington, D.C., for employer.

Sarah M. Hurley (Deborah Greenfield, Acting Deputy Solicitor; Rae Ellen Frank James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand–Award of Benefits (03-BLA-6130) of Administrative Law Judge Joseph E. Kane rendered on a survivor's claim[1] filed 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). This case is before the Board for the third time. Initially, Administrative Law Judge Rudolf L. Jansen credited the miner with eighteen years of coal mine employment,[2] and awarded benefits based on a finding that claimant was entitled to invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304.

Pursuant to employer's appeal, the Board vacated Judge Jansen's finding pursuant to 20 C.F.R. §718.304 and remanded the case for him to reconsider whether the x-ray evidence and other medical evidence supported a finding of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a) and (c),[3] and to adequately explain his findings. *Wade v. New Hignite Coal Co.*, BRB No. 05-0429 BLA (Dec. 28, 2005)(unpub.).

On remand, Judge Jansen found that the x-ray evidence and other medical evidence established invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to Section 718.304. Accordingly, Judge Jansen again awarded benefits.

Pursuant to employer's appeal, the Board vacated Judge Jansen's findings. *I.W.* [*Wade*] *v. New Hignite Coal Co.*, BRB No. 06-0938 BLA (July 30, 2007)(unpub.). Pursuant to Section 718.304(a), the Board held that Judge Jansen failed to adequately explain why he credited Dr. Barrett's readings of "Category A" large opacities, on x-rays dated May 25, 2000 and November 2, 2000, over the reports of Dr. Spitz that the May 25, 2000 x-ray was negative for large opacities, and that the November 2, 2000 x-ray was unreadable. The Board instructed Judge Jansen to reconsider the readings of Drs. Barrett and Spitz, as well as the readings that were rendered by Drs. Milan and Pulmano when the May 25, 2000 and November 2, 2000 x-rays were taken during the miner's

[1] Claimant is the miner's widow. The miner died on November 3, 2000, and claimant filed her survivor's claim on July 26, 2001. Director's Exhibits 2, 8.

[2] The record indicates that the miner's coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[3] The record in this case contains no biopsy or autopsy evidence to be considered under 20 C.F.R. §718.304(b).

hospitalizations.[4] Pursuant to Section 718.304(c), the Board held that Judge Jansen erred in relying on Dr. Woodring's notation of progressive massive fibrosis, in an unclassified interpretation of a November 23, 1999 x-ray, to support invocation under the "other means" category of Section 718.304(c). Further, because Judge Jansen discounted the medical opinions of Drs. Dahhan and Fino for failing to explain Dr. Woodring's findings, the Board held that substantial evidence did not support Judge Jansen's credibility determination. The Board instructed Judge Jansen, on remand, to first determine whether the evidence in each category at 20 C.F.R. §718.304(a) and (c) tended to establish the existence of complicated pneumoconiosis, and to then weigh the evidence supportive of a finding of complicated pneumoconiosis against the contrary probative evidence, with the burden of proof on claimant.

On remand, due to Judge Jansen's retirement, the case was reassigned, without objection, to Administrative Law Judge Joseph E. Kane (the administrative law judge). Pursuant to 20 C.F.R. §718.304(a), the administrative law judge found that the x-ray evidence supported a finding of complicated pneumoconiosis. Specifically, the administrative law judge credited the opinions of Drs. Barrett and Pulmano over that of Dr. Spitz, to find that the November 2, 2000 x-ray was readable. Based on Dr. Barrett's reading of "Category A" large opacities, the administrative law judge found that this x-ray was positive for complicated pneumoconiosis. The administrative law judge further found that the May 25, 2000 x-ray was inconclusive for complicated pneumoconiosis, based on the contradictory readings of Drs. Barrett and Spitz. The administrative law judge determined that Dr. Woodring's reading of the November 23, 1999 x-ray, although not classified pursuant to the ILO standards, was consistent with Dr. Barrett's later finding of complicated pneumoconiosis because it suggested the presence of early progressive massive fibrosis. Further, the administrative law judge declined to draw a negative inference from the fact that the remaining readings of the miner's hospitalization and treatment x-rays did not mention complicated pneumoconiosis. Pursuant to Section 718.304(c), the administrative law judge found the medical opinions of Drs. Dahhan and Fino to be of minimal probative value because the doctors did not address whether complicated pneumoconiosis was present. Weighing all of the evidence together, the administrative law judge found that claimant established entitlement to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to Section 718.304. Accordingly, the administrative law judge awarded benefits.

[4] Additionally, the Board directed the administrative law judge to consider the readings of several other x-rays that were contained in the miner's medical treatment records. *I.W.* [*Wade*] *v. New Hignite Coal Co.*, BRB No. 06-0938 BLA, slip op. at 5 n.3 (July 30, 2007)(unpub.).

On appeal, employer contends that the administrative law judge erred in his weighing of the x-ray evidence pursuant to Section 718.304(a), and in his consideration of the medical opinion evidence pursuant to Section 718.304(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's argument that the administrative law judge erred in finding that the November 2, 2000 x-ray was of sufficient quality to be read. Employer filed a reply brief, reiterating its position.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.205, 718.304; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis where the irrebuttable presumption of death due to pneumoconiosis set forth at Section 718.304 is applicable, or if the evidence establishes that pneumoconiosis caused the miner's death, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(5). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-116 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Section 718.304 provides that there is an irrebuttable presumption that a miner's death was due to pneumoconiosis if (a) an x-ray of the miner's lungs shows an opacity greater than one centimeter and would be classified in category A, B, or C; (b) a biopsy or autopsy shows massive lesions in the lung; or (c) when diagnosed by other means, the condition could reasonably be expected to reveal a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for invocation of the irrebuttable presumption found at Section 718.304. The administrative law judge must first determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, and then must weigh together all evidence before determining whether invocation of the irrebuttable presumption pursuant to Section

718.304 has been established. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 389-90, 21 BLR 2-615, 2-628-29 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991)(*en banc*).

Pursuant to Section 718.304(a), the administrative law judge considered twenty-three readings of eighteen x-rays. Dr. Pulmano, a radiologist, read two x-rays taken of the miner on November 2, 2000, during his last hospitalization.[5] Director's Exhibit 9 at 8, 60. Dr. Barrett, a Board-certified radiologist and B reader, interpreted the November 2, 2000 x-ray as positive for both simple pneumoconiosis and Category A large opacities. Director's Exhibit 10. Dr. Spitz, also a Board-certified radiologist and B reader, indicated that the same x-ray was unreadable because it was a portable x-ray that was overexposed. Director's Exhibit 23. Dr. Barrett read the May 25, 2000 x-ray as positive for simple pneumoconiosis and for Category A large opacities, Director's Exhibit 10, while Dr. Spitz read this x-ray as positive for simple pneumoconiosis, but negative for any large opacities. Director's Exhibit 23. Dr. Milan, a radiologist, interpreted the May 25, 2000 x-ray as showing emphysema and bilateral upper lobe granulomatous scarring. Director's Exhibit 9 at 4, 8-9. Dr. Woodring, a radiologist and B reader, interpreted the November 23, 1999 x-ray as positive for "coal workers' pneumoconiosis" and for "opacities consistent with the early development of progressive massive fibrosis," but he did not classify the x-ray for pneumoconiosis under the ILO standards. Director's Exhibit 9 at 9. Two 1998 x-rays interpreted by Dr. Larson, a radiologist, indicated that the miner had silicosis.[6] Director's Exhibit 9 at 6, 7, 12, 13.

The administrative law judge initially considered the November 2, 2000 x-ray, and found that it was of sufficient quality to be read. The administrative law judge considered Dr. Barrett's assessment that the x-ray was Quality 2, Dr. Pulmano's notation

[5] The first x-ray was taken at 5:30 a.m.. Dr. Pulmano noted that the x-ray was slightly overpenetrated, and read the x-ray as reflecting no significant changes in the nodular opacities that were present in both upper lungs. Director's Exhibit 9 at 8, 60. The second x-ray was taken at 9:45 a.m.; Dr. Pulmano noted that the lungs were unchanged. *Id.*

[6] The remaining x-ray readings of record are all unclassified readings of hospital x-rays that make no mention of either simple or complicated pneumoconiosis. These x-rays are dated: May 11 and March 9, 1999; Director's Exhibit 9 at 5, 11; January 15, 1997; Director's Exhibit 9 at 13-14; August 3 and February 16, 1995; Director's Exhibit 9 at 15, 37, 38; June 6, 1994; Director's Exhibit 9 at 16, 39; December 2, 1993; Director's Exhibit 9 at 16-17, 42; September 23 and January 21, 1992; Director's Exhibit 9 at 17, 43, 44; October 7, August 27, June 4 and March 12, 1991; Director's Exhibit 9 at 17-19, 21, 45.

that the film was "slightly overpenetrated," and Dr. Spitz's opinion that the x-ray was unreadable. Decision and Order on Remand at 6. Based on the evaluations of Drs. Barrett and Pulmano, and the fact that both physicians read the x-ray—Dr. Barrett finding Category A large opacities and Dr. Pulmano noting "nodular opacities"—the administrative law judge determined that "the weight of the evidence establishes that the November 2, 2000 film is of sufficient quality to be read for the purpose of diagnosing pneumoconiosis." Decision and Order on Remand at 6. Weighing the readings of Drs. Barrett and Pulmano, the administrative law judge found that the November 2, 2000 x-ray was positive for complicated pneumoconiosis, based on Dr. Barrett's superior qualifications. *Id.* The administrative law judge found that Dr. Spitz's opinion, that the x-ray was unreadable, neither supported nor negated a finding of complicated pneumoconiosis. Addressing employer's argument that there was no evidence the November 2, 2000 x-ray complied with the quality standards for x-rays contained in 20 C.F.R. Part 718, the administrative law judge found that the quality standards were not applicable to the November 2, 2000 x-ray because it was a hospital x-ray, not an x-ray generated in connection with a claim for benefits. Decision and Order on Remand at 6 n.4.

The administrative law judge next considered the May 25, 2000 x-ray, and found it to be inconclusive for the existence of complicated pneumoconiosis, since there was no basis for giving greater weight to Dr. Barrett's positive reading over Dr. Spitz's negative reading. The administrative law judge found that Dr. Milan's interpretation of the May 25, 2000 x-ray was unclassified, and thus did not support a finding of complicated pneumoconiosis.

Finally, the administrative law judge discussed the remaining treatment x-rays taken from 1991 through 1999. Decision and Order on Remand at 6-7. The administrative law judge noted that most of these x-rays were read as positive for nodular densities, and that a November 23, 1999 x-ray was read by Dr. Woodring as positive for coal workers' pneumoconiosis, and consistent with early "progressive massive fibrosis." *Id.* The administrative law judge noted that, except for two 1998 readings of silicosis by Dr. Larson, no other hospital x-ray readings diagnosed simple or complicated pneumoconiosis. The administrative law judge declined to infer that complicated pneumoconiosis was absent based on those x-rays, finding that the readers of the treatment x-rays were either "not looking for the disease or were not adequately trained to identify it" because they did not diagnose even simple pneumoconiosis, when Drs. Barrett and Spitz agreed that simple pneumoconiosis was present. Decision and Order on Remand at 7. The administrative law judge further inferred that the readers of the treatment x-rays were likely "misdiagnosing pneumoconiosis nodules as granuloma[tou]s disease," since Dr. Larson found silicosis in 1998 and Dr. Woodring found early progressive massive fibrosis in 1999. *Id.*

Upon consideration of the x-ray evidence as a whole, the administrative law judge concluded that the November 2, 2000 x-ray was positive for complicated pneumoconiosis, the May 25, 2000 x-ray was inconclusive for complicated pneumoconiosis, and the November 23, 1999 unclassified x-ray reading of early progressive massive fibrosis, although insufficient to establish the existence of complicated pneumoconiosis, was consistent with Dr. Barrett's later findings of Category A large opacities. Consequently, the administrative law judge found that complicated pneumoconiosis was established by the x-ray evidence pursuant to Section 718.304(a).

Employer argues that the administrative law judge erred in considering the November 2, 2000 x-ray, because claimant submitted no evidence that it complies with the quality standards, which require a portable x-ray to be taken on units having certain minimum technical ratings.[7] Employer asserts that the administrative law judge erred by finding that the quality standards do not apply to this treatment x-ray because it was not taken in anticipation of litigation, since Dr. Barrett interpreted the x-ray on November 16, 2001, at claimant's request and in support of her claim for benefits. The Director takes no position as to whether the quality standards apply to Dr. Barrett's rereading of the November 2, 2000 x-ray, but responds that, even if the quality standards applied to that reading, compliance with the quality standards is presumed, in the absence of evidence to the contrary. Director's Response Brief at 3-4, *citing* 20 C.F.R. §718.102(e).

As noted by the administrative law judge, the quality standards apply only to evidence that is developed in connection with a claim for benefits. 20 C.F.R. §718.101(b); *J.V.S.* [*Stowers*] *v. Arch of W. Va./Apogee Coal Co.*, 24 BLR 1-78, 1-89 (2008). Thus, the November 2, 2000 hospital x-ray read by Dr. Pulmano was not subject to the quality standards.[8] Regarding Dr. Barrett's rereading of the November 2, 2000 x-

[7] Employer relies upon the technical quality standard that portable x-rays be "made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz." Appendix A to 20 C.F.R. Part 718, subsection (5).

[8] The comments to the revised regulations explain that evidence not subject to the quality standards must still be assessed for reliability by the fact finder:

> The Department note[s] that [20 C.F.R.] §718.101 limits the applicability of the quality standards to evidence "developed * * * in connection with a claim for benefits" governed by 20 CFR [P]arts 718, 725, or 727. Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator still must be persuaded that the evidence is reliable in order for it to form the basis for a finding of fact on an entitlement issue.

65 Fed. Reg. 79,928 (Dec. 20, 2000).

ray in connection with claimant's claim for benefits, we agree with the Director that, even assuming that compliance with the quality standards would be required, compliance with the quality standards is presumed in the absence of evidence to the contrary. 20 C.F.R. §718.102(e). Thus, contrary to employer's contention, it is not claimant's burden to establish that November 2, 2000 x-ray was taken in compliance with the technical quality standard for portable x-rays found at Appendix A to 20 C.F.R. Part 718, subsection (5); it is presumed that the standard was met. To the extent employer argues that Dr. Spitz's opinion that the x-ray was unreadable was "evidence to the contrary" within the meaning of Section 718.102(e), the administrative law judge considered the reliability of this x-ray, and reasonably found that it was of sufficient quality to be read for pneumoconiosis, based on Dr. Barrett's quality 2 rating and Dr. Pulmano's opinion that the x-ray was only "slightly" overpenetrated. *See generally Anderson*, 12 BLR at 1-113 (holding that the Board is not empowered to reweigh the evidence). Consequently, we reject employer's contention that the administrative law judge erred in considering the November 2, 2000 x-ray because claimant did not submit evidence that it complied with the Part 718 quality standards relating to portable x-rays.

Employer argues further that the administrative law judge erred in finding that Dr. Pulmano's reading supports Dr. Barrett's quality reading of the November 2, 2000 x-ray, because Dr. Pulmano performed two x-rays on that date, and it is unclear which x-ray Dr. Barrett read. The Director responds that employer's argument is "unavailing," as either of Dr. Pulmano's readings supports Dr. Barrett's quality determination, in that Dr. Pulmano read both x-rays. Director's Response Brief at 3. We agree with the Director. Whether Dr. Barrett or Dr. Spitz evaluated the 5:30 or 9:45 a.m. x-ray does not affect the administrative law judge's crediting of Dr. Barrett's quality assessment over that of Dr. Spitz, because Dr. Pulmano read both x-rays, and the administrative law judge found that it was the fact that Dr. Pulmano read the x-ray for "nodular opacities" that supported Dr. Barrett's assessment that the x-ray was readable.[9] We therefore reject employer's arguments concerning the reliability of the November 2, 2000 x-ray. We hold that the

[9] Employer argues in the alternative that the administrative law judge mischaracterized Dr. Spitz's opinion as stating that the November 2, 2000 x-ray was unreadable because, employer asserts, Dr. Spitz provided an interpretation of this x-ray in his narrative report. Dr. Spitz provided a single narrative report dated August 22, 2002, addressing the two x-rays dated November 2, 2000 and May 25, 2000. *See* Director's Exhibit 23. In the narrative, Dr. Spitz indicated findings consistent with simple pneumoconiosis, "2/1." *Id.* On the x-ray classification sheets, Dr. Spitz indicated that the November 2, 2000 x-ray was unreadable, but read the May 25, 2000 x-ray as "2/1" for simple pneumoconiosis. Consequently, the administrative law judge permissibly inferred that Dr. Spitz's narrative described his interpretation of the May 25, 2000 x-ray and not the November 2, 2000 x-ray. We therefore reject employer's argument.

administrative law judge properly considered the November 2, 2000 x-ray in his weighing of the x-ray evidence at Section 718.304(a), and permissibly found that it supported a finding of complicated pneumoconiosis. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004).

Employer next argues that the administrative law judge erred in finding that the May 25, 2000 x-ray was inconclusive for the existence of complicated pneumoconiosis since it was read by both Drs. Spitz and Milan as negative for complicated pneumoconiosis, and only Dr. Barrett read it as positive for complicated pneumoconiosis. We reject employer's argument. The administrative law judge permissibly found that the May 25, 2000 x-ray was inconclusive as to the existence of complicated pneumoconiosis since it was read as both positive and negative for complicated pneumoconiosis by two dually qualified readers, Drs. Barrett and Spitz, and he reasonably found that the interpretation of Dr. Milan, a lesser qualified physician, did not resolve the conflict between those readings. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81, 18 BLR 2A-6-9 (1994); Decision and Order on Remand at 6.

Employer argues that the administrative law judge erred in failing to consider the remaining x-rays contained in the miner's hospitalization records to be x-ray evidence that was negative for complicated pneumoconiosis. We disagree. The administrative law judge was not required to draw a negative inference from the fact that the hospital x-rays did not mention the presence or absence of pneumoconiosis. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-219 (1984). Moreover, the administrative law judge found that Dr. Barrett's positive reading of the November 2, 2000 x-ray refuted any negative inference that might be drawn by the failure of the hospital x-rays to mention pneumoconiosis. Decision and Order on Remand at 7. Contrary to employer's contention, the administrative law judge was not required to accord greater weight to the hospital x-rays because they were read by physicians who were involved in treating the miner. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003). Consequently, we reject employer's arguments pursuant to Section 718.304(a), and affirm the administrative law judge's finding that the x-ray evidence established the existence of complicated pneumoconiosis. *See Staton*, 65 F.3d at 59, 19 BLR at 2-279-80.

Pursuant to Section 718.304(c), the administrative law judge considered the medical opinions of Drs. Dahhan and Fino, which were based on a review of the miner's medical records. Dr. Dahhan opined that the miner had pneumoconiosis, but that it did not hasten his death. Director's Exhibit 22. Dr. Fino opined that pneumoconiosis played

no role in the miner's death due to a heart attack.[10] Director's Exhibit 27. As the administrative law judge found, neither Dr. Dahhan nor Dr. Fino addressed the issue of whether the miner had complicated pneumoconiosis. Director's Exhibits 22, 27. The administrative law judge therefore concluded that the medical opinions "shed little, if any, light on the issue" of whether the miner had complicated pneumoconiosis. Decision and Order on Remand at 8. The administrative law judge further found that there was "no other evidence in the 'other means' category that bears on the issue of complicated pneumoconiosis." *Id.*

Employer argues that the administrative law judge erred by failing to address the reports from the hospitalizations of the miner in November 2000 and May 1999, and asserts that the records of those hospitalizations do not support a finding of complicated pneumoconiosis, and thus required the administrative law judge to draw a negative inference that the miner did not have complicated pneumoconiosis.[11] We disagree. The administrative law judge fully considered the reports of Drs. Dahhan and Fino, who reviewed all of the miner's hospitalization and treatment records. The administrative law judge accurately noted that neither Dr. Dahhan nor Dr. Fino addressed the presence or absence of complicated pneumoconiosis, based on the records they reviewed. The administrative law judge noted further that there was no other relevant evidence bearing on the presence or absence of complicated pneumoconiosis. Since the two hospital records that employer cites do not address the presence or absence of complicated pneumoconiosis, and the administrative law judge was not required to draw a negative inference therefrom, we hold that the administrative law judge's finding that there is "no other evidence in the 'other means' category that bears on the issue of complicated pneumoconiosis," was permissible and supported by substantial evidence. *See Marra*, 7 BLR at 1-216; Decision and Order on Remand at 8. Consequently, we reject employer's contentions pursuant to Section 718.304(c), and we affirm the administrative law judge's finding that the medical opinion evidence does not establish the presence or absence of complicated pneumoconiosis.

Considering all of the relevant evidence, the administrative law judge found that the x-ray evidence as a whole supported a finding of complicated pneumoconiosis, there

[10] The miner's death certificate identifies myocardial infarction as the immediate cause of death, and lists no other causes or conditions. Director's Exhibit 8.

[11] The record of the miner's final hospitalization on November 3, 2000, the date of his death, reflects diagnoses of myocardial infarction and cardiogenic shock. Director's Exhibit 9 at 1. The record of an earlier hospitalization of May 14, 1999, lists several diagnoses, including pneumoconiosis, but does not mention complicated pneumoconiosis. Director's Exhibit 9 at 2-3.

was no biopsy or autopsy evidence, and the medical opinion evidence shed little, if any, light on the issue of complicated pneumoconiosis. Decision and Order on Remand at 8. The administrative law judge therefore determined that claimant established invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to Section 718.304. Based on our affirmance of the administrative law judge's findings pursuant to Section 718.304(a), (c), we affirm the administrative law judge's finding that the relevant evidence, considered as a whole, is sufficient to establish invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to Section 718.304. *See Gray*, 176 F.3d at 389-90, 21 BLR at 2-628-29; *Melnick*, 16 BLR at 1-33. As employer raises no other arguments, we affirm the administrative law judge's award of benefits.

Accordingly, the administrative law judge's Decision and Order on Remand–Award of Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge