BRB No. 08-0340 BLA

C.S.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
KOCH CARBON RAVEN DIVISION VA	)	
	)	DATE ISSUED: 02/27/2009
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 – Award of Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

H. Ashby Dickerson (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Helen H. Cox (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank James, Acting 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 Appeal Judges.

PER CURIAM:

Employer appeals the Decision and Order – Award of Benefits (2006-BLA-05537) of Administrative Law Judge Edward Terhune Miller on a subsequent 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). The administrative law judge credited claimant with approximately seventeen years of coal mine employment and found, based on employer's concession, that claimant established a totally disabling respiratory or pulmonary impairment and a change in applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). The administrative law judge further determined, based on his review of all of the record evidence, that claimant was entitled to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304, and that claimant established that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203. Accordingly, the administrative law judge awarded benefits.

On appeal, employer asserts that the administrative law judge erred in admitting Claimant's Exhibit 9 "without specifically identifying its contents and giving [employer] the opportunity to object to its admission." Employer's Brief at 11. Employer contends that the administrative law judge "erred in allowing [claimant] to submit a positive x-ray reading in rebuttal of the Department of Labor (DOL)-sponsored x-ray, or in the alternative, by not finding 'good cause' to allow [employer] to submit a second rebuttal interpretation to the same film." Employer's Brief in Support of Petition for Review at 10-11. With respect to the administrative law judge's findings on the merits, employer argues that the administrative law judge erred in finding the x-ray, CT scan, and medical opinion evidence to be sufficient to establish that claimant suffers from simple and complicated pneumoconiosis, that he erred in finding that claimant's pneumoconiosis arose out of coal mine employment, and in finding that claimant is entitled to the irrebuttable presumption of total disability due to pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response. Citing *J.V.S. v. Arch of West Virginia/Apogee Coal Co.*, 24 BLR 1-78 (2008), the Director asserts that a claimant may rebut a positive x-ray reading obtained in conjunction with a DOL-sponsored examination. The Director urges the Board to affirm the administrative law judge's finding that Dr. Alexander's positive rebuttal reading of the DOL x-ray, which

[1] Claimant filed an initial claim for benefits on July 11, 1994, which was denied by Administrative Law Judge Frederick D. Neusner on July 29, 1996, on the ground that claimant failed to establish the existence of pneumoconiosis. Director's Exhibit 1. Claimant appealed, and the denial was affirmed by the Board, [*C.S.*] *v. Koch Carbon Raven Div., Va.*, BRB No. 96-1498 BLA (Jun. 25, 1997) (unpub.). *Id*. Claimant took no further action with respect to the denial of benefits until he filed this subsequent claim on May 19, 2005. Director's Exhibit 2.

was proffered as Claimant's Exhibit 3, is admissible under 20 C.F.R. §725.414. The Director, however, takes no position on the merits of claimant's entitlement to benefits. Employer has filed a reply to the briefs filed by claimant and the Director, which reiterates its arguments.[2]

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.[3] 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).

Evidentiary Limitations

Employer maintains that the administrative law judge erred in allowing claimant to submit, as rebuttal evidence, Dr. Alexander's positive reading for simple and complicated pneumoconiosis of the DOL x-ray dated August 18, 2005. Claimant's Exhibit 3. Employer asserts that because the original reading by Dr. Rasmussen of the August 18, 2005 x-ray was positive for simple and complicated pneumoconiosis, Dr. Alexander's interpretation could not qualify as rebuttal evidence. Employer's Brief in Support of Petition for Review at 13-17. We reject employer's argument. The Board has specifically held that a claimant is entitled to submit a positive rereading of a positive x-ray obtained by DOL, adopting the Director's reasonable interpretation of 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii), and holding that these evidentiary regulations do "not limit a party to rebutting a particular item of evidence, but permit a party to respond to a particular item of evidence in order to rebut 'the case' presented by the opposing party." *J.V.S.*, 24 BLR at 1-78.

Employer also contends that permitting a claimant to both select the physician who will read the x-ray associated with the DOL-sponsored pulmonary evaluation and to also submit a rebuttal reading of a favorable, positive reading of the DOL x-ray, places employers at an unfair disadvantage. We disagree. The regulations provide for claimant

[2] We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b), that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and that the biopsy/bronchoscopy evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit as the miner was employed in the coal mining industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 1.

and the responsible operator to each submit an x-ray interpretation in rebuttal to the x-ray interpretation submitted by the Director pursuant to 20 C.F.R. §725.406. *See* 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). Thus, the parties are able to submit the same amount of evidence. Employer's argument also mistakenly assumes that the x-ray interpretation submitted by the Director, as part of his obligation to provide claimant with a complete pulmonary evaluation, will always be positive for pneumoconiosis. However, if this x-ray is read as negative for pneumoconiosis, an employer would nonetheless be entitled to submit a negative rebuttal reading of the x-ray to refute the case presented by claimant. *See* 20 C.F.R. §725.414(a)(3)(ii). Thus, we affirm the administrative law judge's decision to admit Dr. Alexander's rebuttal reading into the record as Claimant's Exhibit 3.[4] Decision and Order at 3; Claimant's Exhibit 3.

Notwithstanding, there is merit to employer's assertion that the administrative law judge erred in admitting Claimant's Exhibit 9. At the hearing, claimant proffered Claimant's Exhibits 1-8, 10-14 for admission into the evidentiary record. Claimant's counsel indicated that he was unable to locate, for identification,[5] Claimant's Exhibit 9 in his copy of the case file, and therefore, counsel stated that he withdrew that evidence. Hearing Transcript at 40. The administrative law judge left the record open post-hearing for the submission of briefs. The parties prepared post-hearing briefs presenting their respective cases based on the hearing record evidence. Thereafter, the administrative law judge issued his Decision and Order on December 31, 2007, wherein he revisited, *sua sponte*, the evidentiary submissions of the parties. The administrative law judge noted that Claimant's Exhibit 9, "which is comprised of Dr. Farrow's treatment records, was actually exchanged between the parties in September 2006 and is in the record file." Decision and Order at 4. The administrative law judge indicated that he was admitting Claimant's Exhibit 9 into the evidentiary record as part of claimant's treatment records pursuant to 20 C.F.R. §725.414(a)(4). *Id*.

Employer contends that the administrative law judge erred in admitting Claimant's Exhibit 9 because it was withdrawn by claimant's counsel at the hearing. Employer

[4] Because the evidentiary regulations provide for only one rebuttal reading each by claimant and employer of the Department of Labor x-ray, we reject employer's assertion that the administrative law judge erred in not permitting employer to submit a reading in rebuttal of Dr. Alexander's positive reading, which was submitted in rebuttal by claimant. *See* 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii).

[5] The regulation at 20 C.F.R. §725.464 provides, in pertinent part, that "[a]ll medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, must be marked for identification and incorporated into the record. 20 C.F.R. §725.464.

asserts that the administrative law judge erred in failing to properly identify the contents of the exhibit, and by not providing employer the opportunity to object to its admission. Employer's Brief in Support of Petition for Review at 12. Employer's assertions of error have merit.

Although an administrative law judge has broad discretion in the resolution of procedural matters, the elements of a full and fair hearing necessitate that the parties be given "the opportunity to present a claim or defense . . . *with knowledge of the evidence to be presented at the hearing*, the witnesses to be heard, and the contentions of the opposing party." *See Laughlin v. Director, OWCP*, 1 BLR 1-488, 1-493 (1978) (emphasis added). Procedural due process requires that interested parties be notified of the evidence contained in the record and that they be afforded the opportunity to present objections to that evidence. Furthermore, the regulation at 20 C.F.R. §725.456(a)(2) specifically provides that all "documentary material, including medical reports, . . . may be received in evidence *subject to the objection of any party* . . . ." 20 C.F.R. §725.456(a)(2) (emphasis added).

In this case, because the administrative law judge, *sua sponte*, admitted Claimant's Exhibit 9 into the record after the close of the hearing, and did not give employer the opportunity to object to the admission of that evidence, we conclude that the administrative law judge erred in failing to comply with the requirements of 20 C.F.R. §725.456(a)(2). Consequently, we hold that the administrative law judge abused his discretion in admitting Claimant's Exhibit 9 and vacate his evidentiary ruling. *See generally Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004) (*en banc*). Furthermore, we agree with employer that the administrative law judge erred in failing to specifically identify the dates of the treatment notes he was admitting as Claimant's Exhibit 9. Employer correctly asserts that there is confusion as to the contents of Claimant's Exhibit 9, given that claimant's counsel was unable to proffer that exhibit for identification at the hearing.[6] Because the administrative law judge specifically relied upon Dr. Farrow's opinion in finding that claimant has complicated pneumoconiosis, but did not identify what treatment records he reviewed in concluding that Dr. Farrow's opinion was reasoned and documented, we are unable to discern the extent to which the administrative law judge's award of benefits is based on his review of Claimant's Exhibit 9, which was not properly admitted into the record. Decision and Order at 20. Thus, we are compelled to vacate the administrative law judge's Decision and Order and remand the case for further consideration. On remand, the administrative law judge has discretion, upon motion by claimant's counsel, to admit Claimant's Exhibit 9 into the record, if that evidence is properly identified and employer's counsel is afforded the opportunity to

[6] Claimant's counsel asserts that Claimant's Exhibit 9, "as evidenced by the final evidence summary" contains a pulmonary function study. Claimant's Brief at 7.

object to its admission in accordance with 20 C.F.R. §725.456(a)(2). *See generally Troup v. Reading Anthracite Coal Co.*, 22 BLR 1-11, 1-21 (1999) (*en banc*).

Merits of Entitlement

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

Section 411(c)(3)(A) of the Act, 30 U.S.C. §921(c)(3)(A), as implemented by 20 C.F.R. §718.304, 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)-(c). 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. In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *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*); *see also Eastern Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000).

Employer contends that the administrative law judge erred in finding that claimant is entitled to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Employer asserts that the administrative law judge erred in his consideration of the x-ray evidence because he "does [not] indicate whether he is considering this evidence under [20 C.F.R. §]718.202(a)(1) or under [20 C.F.R. §]718.304(a) even though his final conclusion regarding the x-ray evidence is that it supports a positive finding of complicated pneumoconiosis." Employer's Brief in Support of Petition for Review at 18. Employer contends that the administrative law judge misstated the quality and quantity of the x-ray evidence, and that he failed to properly consider negative readings for complicated pneumoconiosis by Drs. Wheeler and Scott. Employer's arguments have merit.

The administrative law judge began his analysis by first considering whether claimant established the existence of pneumoconiosis. The administrative law judge noted that 20 C.F.R. §718.202 provides four alternative methods by which a claimant may establish the existence of pneumoconiosis. They are: 1) chest x-rays; 2) biopsy or autopsy; 3) the presumptions contained at 20 C.F.R. §§718.304, 718.305 or 718.306; or 4) a physician's reasoned medical judgment, notwithstanding a negative x-ray, that a claimant suffers from pneumoconiosis. *See* 20 C.F.R. §718.202(a)(1)-(4).

The administrative law judge considered the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1), stating that the record "includes various interpretations of chest x-rays performed on *five* different dates." *Id.* (emphasis added). The administrative law judge noted that an x-ray dated August 18, 2005 was read as positive, 3/3, with Category C opacities, by Dr. Rasmussen, a B reader, and by Dr. Alexander, a dually-qualified Board-certified radiologist and B reader. Decision and Order at 17; Director's Exhibit 12; Claimant's Exhibit 3. The administrative law judge also found the x-ray was read by Dr. Wheeler, a dually-qualified Board-certified radiologist and B reader, as negative, 0/1, but "in answer to whether there were 'any parenchymal abnormalities consistent with pneumoconiosis' he indicated 'yes' with a question mark." Decision and Order at 17; Director's Exhibit 17. The administrative law judge stated that the "probative value of Dr. Wheeler's report is lessened by his equivocation" and found that the August 18, 2005 x-ray was positive for complicated pneumoconiosis. Decision and Order at 17.

The administrative law judge found that an x-ray dated November 16, 2005, had only one reading, 1/0(?), by Dr. Wheeler, which the administrative law judge considered to be positive for pneumoconiosis. Director's Exhibit 16. The administrative law judge noted that in the comments section of the ILO form, Dr. Wheeler wrote that there were "small nodular infiltrates" that were compatible with "granulomatous disease and/or [coal workers' pneumoconiosis," but that he explained that the "masses are not large opacities of [coal workers' pneumoconiosis] because background small nodules are low profusion and because they involve pleura which has no alveoli." *Id*. Because Dr. Wheeler used a question mark in interpreting the profusion of claimant's simple pneumoconiosis, the administrative law judge found that Dr. Wheeler's x-ray reading, overall, was equivocal and entitled to only "minimal weight." Decision and Order at 17.

The administrative law judge described an x-ray dated April 6, 2006 "as having been interpreted as positive by two dually-qualified readers and as negative by another dually-qualified reader," although he only discussed the readings of two dually-qualified radiologists: Dr. Alexander, who interpreted the April 6, 2006 x-ray as positive for pneumoconiosis, 2/3, with Category C opacities, and Dr. Scott, who interpreted the same x-ray as positive for pneumoconiosis, 1/1, with no large opacities. Decision and Order at 17-18; Claimant's Exhibit 2; Employer's Exhibit 22. In the comments section of the ILO form, Dr. Scott stated that he could not rule out silicosis or coal workers'

pneumoconiosis" although he opined that "most (or all) is something else . . . [p]ossibilities include pneumonia, lymphoma, bronchoalveolar carcinoma, atypical [tuberculosis]." Employer's Exhibit 22. In light of Dr. Scott's use of an "alternative diagnosis," the administrative law judge found that Dr. Scott's reading was equivocal and entitled to diminished weight. Decision and Order at 18. Conversely, the administrative law judge credited Dr. Alexander's unequivocal reading and found that the April 6, 2006 x-ray was positive for complicated pneumoconiosis. *Id*.

Finally, the administrative law judge discussed an x-ray dated May 5, 2006, which he found had only one reading by Dr. Wheeler.[7] Decision and Order at 18. The administrative law judge determined that Dr. Wheeler read the May 5, 2006 x-ray as negative for pneumoconiosis, 0/1. However, he noted that in response to the question on the ILO sheet as to whether there were any parenchymal abnormalities consistent with pneumoconiosis, Dr. Wheeler included a question mark. Decision and Order at 18; Employer's Exhibit 9. The administrative law judge also noted that in the comments section of the ILO sheet, Dr. Wheeler wrote, "some small nodules could be CWP but masses are unlikely to be large opacities of CWP unless there is well documented history of drilling without respiratory protection." *Id*. The administrative law judge provided the following explanation as to why he found that the May 5, 2006 x-ray was equivocal and entitled to little weight:

> Dr. Wheeler apparently conceded the presence of masses in [c]laimant's lungs, but did not diagnose complicated pneumoconiosis because he had no evidence that [c]laimant performed his coal mine drilling without wearing a respirator. There is no regulatory requirement that a diagnosis of complicated pneumoconiosis must be accompanied by evidence that a coal miner worked without a respirator. Consequently, Dr. Wheeler's report is equivocal and ambiguous and not entitled to significant weight.

Decision and Order at 18.

In summary, the administrative law judge stated that "there are two chest x-rays that are positive for complicated pneumoconiosis, one chest x-ray that is possibly negative for complicated pneumoconiosis, and two chest x-ray reports with virtually no probative value because they are either equivocal or ambiguous." Decision and Order at 8. He then concluded that a preponderance of the x-ray evidence supports a finding of complicated pneumoconiosis. *Id*.

[7] The administrative law judge's Decision and Order contains a typographical error when he referred to this x-ray as dated May 6, 2005, when it is actually dated May 5, 2006. Employer's Exhibit 9.

We agree with employer that the administrative law judge erred in weighing the x-ray evidence. Initially, employer is correct that the administrative law judge did not specify his findings with respect to the fifth x-ray referenced in his Decision and Order at pages 17-18.[8] Furthermore, the administrative law judge erred in rejecting the negative readings for *complicated* pneumoconiosis by Drs. Wheeler and Scott because the administrative law judge found that these radiologists were equivocal as to the existence of *simple* pneumoconiosis. Decision and Order at 17-18. Contrary to the administrative law judge's finding, although Drs. Wheeler and Scott questioned whether claimant has simple pneumoconiosis, they specifically diagnosed on their respective ILO classification forms that claimant does not have Category A, B, or C large opacities for complicated pneumoconiosis.[9] Because the administrative law judge has misstated the quantity and quality of the x-ray evidence, and failed to weigh all of the conflicting x-readings for complicated pneumoconiosis, we vacate the administrative law judge's finding that claimant established the existence of complicated pneumoconiosis based on the x-ray evidence, and remand the case for further consideration. *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Employer also contends that the administrative law judge erred in his consideration of the CT scan evidence. There are three readings of two CT scans of record. Dr. Scott read a CT scan dated September 27, 2001, as showing changes most compatible with "[tuberculosis], unknown activity or possibly fungal disease." Employer's Exhibit 16. Dr. Scott noted that "the areas of consolidation are probably granulomatous" as the "location and number are not compatible with large opacities of silicosis/[coal workers' pneumoconiosis]." *Id*.

A March 21, 2005 CT scan was read by Dr. Coburn as showing small rounded densities throughout both lung fields with progressive massive fibrosis in both the left and right lung. Claimant's Exhibit 7. Dr. Coburn stated, "I feel that all these changes are secondary to coal workers' pneumoconiosis but there has indeed been an interval change and that findings at this time are not typical for progressive massive fibrosis but can indeed occur." *Id*. Dr. Coburn recommended a PET scan to rule out malignancy. *Id*.

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[8] Employer notes that it is possible that the fifth x-ray to which the administrative law judge referred is a digital x-ray dated April 13, 2006, although the administrative law judge indicated that he would not weigh that x-ray pursuant to 20 C.F.R. §718.202(a)(1). Employer's Brief in Support of Petition for Review at 18; Decision and Order at 11 n.11.

[9] The ILO classification form requires a physician interpreting an x-ray to first determine whether there are "[a]ny [p]arenchymal [a]bnormalities [c]onsistent with [p]neumoconiosis," and then to determine the size of the opacities. *See* Form CM-933.

Dr. Scott also read the March 21, 2005 CT scan. He opined that the scan showed probable granulomatous disease, tuberculosis, or histoplasmosis with progression, and further stated:

> While some of the small nodules could be due to silicosis/[coal worker's pneumoconiosis], they could just as well be due to the infection process. The large areas of consolidation are not typical for large opacities of silicosis/[coal workers' pneumoconiosis]. The number of them would also be highly unusual for large opacities due to pneumoconiosis.

Employer's Exhibit 18.

The administrative law judge found that "while the CT scan evidence is not conclusive, it does not detract from the positive chest x-ray findings of complicated pneumoconiosis, and tends to establish the existence of massive lesions in the lungs which suggest complicated pneumoconiosis." Decision and Order at 19. To the extent that the administrative law judge referenced his finding with regard to the x-ray evidence, which we have vacated, in his consideration of the CT scan evidence, we must vacate his finding that the CT scan evidence is supportive of a finding of complicated pneumoconiosis.

Although employer suggests that Dr. Coburn's opinion reflects "uncertainty on his part" as to what he saw on the March 21, 2005 CT scan, we conclude that the administrative law judge acted within his discretion in finding that Dr. Coburn's reading is supportive of a finding of progressive massive fibrosis and coal workers' pneumoconiosis. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). However, we agree with employer that the administrative law judge failed to properly consider Dr. Scott's comments that the "large areas of consolidation" he identified on the CT scans were either "highly unusual" for large opacities due to pneumoconiosis or are "not compatible" with large opacities for pneumoconiosis. Employer's Exhibits 16, 18. Thus, on remand, the administrative law judge must further consider the conflicting CT scan evidence and determine whether it supports a finding of complicated pneumoconiosis.

Lastly, employer contends that the administrative law judge erred in discrediting the opinions of Drs. Hippensteel and Fino as to whether claimant has either simple or complicated pneumoconiosis. In weighing the conflicting medical opinion evidence, the administrative law judge found that because the x-ray evidence was positive for complicated pneumoconiosis, the opinions of Drs. Hippensteel and Fino, diagnosing sarcoidosis are "undermined." Decision and Order at 20. Because we conclude that the administrative law judge erred in weighing the x-ray evidence, we also hold that the

administrative law judge erred in rendering his credibility determinations with respect to whether the medical opinion evidence supports a finding of complicated pneumoconiosis. Furthermore, although the administrative law judge gave controlling weight to the opinions of Drs. Rasmussen and Farrow, we agree with employer that the administrative law judge erred in failing to properly explain the basis for his finding that the opinions of Drs. Rasmussen and Farrow are reasoned and documented.[10] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*). Therefore, we vacate the administrative law judge judge's finding that the medical opinion evidence supports a finding of complicated pneumoconiosis and we vacate the administrative law judge's award of benefits.

On remand, the administrative law judge must identify the evidentiary submissions of the parties in accordance with 20 C.F.R. §725.414. The administrative law judge must make specific findings under the provisions of 20 C.F.R. §718.304(a)-(c) as to whether claimant has established the existence of complicated pneumoconiosis. The administrative law judge must weigh all of the x-ray, CT scan, and medical opinion evidence under 20 C.F.R. §718.304(a)-(c) to determine whether claimant has satisfied his burden of proof by a preponderance of the evidence. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 23 BLR 2-374 (4th Cir. 2006); *Scarbro*, 220 F.3d at 250, 22 BLR at 2-93. If the administrative law judge finds that claimant has established the existence of complicated pneumoconiosis, he must then consider pursuant to 20 C.F.R. §718.203, whether claimant's complicated pneumoconiosis arose out of coal mine employment. *Daniels Co. v. Mitchell*, 479 F.3d 321, 24 BLR 2-1 (4th Cir. 2007) (holding that the

[10] Employer maintains that the administrative law judge did not take into consideration whether Dr. Rasmussen diagnosed the existence of simple and complicated pneumoconiosis based solely on a positive x-ray. Employer's Brief in Support of Petition for Review at 23. Employer contends that Dr. Rasmussen relied upon an inaccurate smoking history in rendering his opinion as to the etiology of claimant's respiratory condition. *Id.* at 26. Employer further contends that the administrative law judge erred in relying on Dr. Farrow's opinion because he failed to provide any rationale in his treatment notes for his diagnosis that claimant has complicated pneumoconiosis. *Id.* at 28. On remand, the administrative law judge must determine whether the physicians' opinions are reasoned and documented, taking into consideration the objective evidence, and the relevant smoking and work histories, relied upon in forming their respective medical conclusions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*).

miner must also establish that his complicated pneumoconiosis arose out of coal mine employment).

If claimant is unable to establish the existence of complicated pneumoconiosis, the administrative law judge must consider whether claimant may establish the existence of simple pneumoconiosis (clinical or legal) under the provisions of 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge must also consider, if necessary, whether claimant has established that he is totally disabled by pneumoconiosis pursuant to 20 C.F.R. §718.204(c). In addressing all of the relevant issues of entitlement, the administrative law judge must explain the basis for his findings of fact and conclusions of law as required by the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). The administrative law judge must also determine the weight to accord the physicians' opinions based on his findings as to whether their medical conclusions are reasoned and documented. *See Clark*, 12 BLR at 1-155.

Accordingly, we affirm in part, and vacate in part, the administrative law judge's Decision and Order – Award of Benefits, and remand the case for further consideration consistent with this opinion.

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