BRB No. 13-0281 BLA

TERRY R. BLANKENSHIP	)	
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Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 02/11/2014
	)	
DOMINION COAL COMPANY	)	
	)	
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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Husch Blackwell LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (2011-BLA-6260) of Administrative Law Judge Linda S. Chapman awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the

Act).[1] This case involves a subsequent claim filed on November 2, 2010.[2]

After crediting claimant with thirteen years of coal mine employment,[3] the administrative law judge found that the new evidence established the existence of simple clinical pneumoconiosis[4] pursuant to 20 C.F.R. §§718.202(a) (2013). The administrative law judge, therefore, found that claimant established that one of the applicable conditions of entitlement had changed since the date upon which the denial of claimant's prior claim became final. 20 C.F.R. §725.309(c). Consequently, the administrative law judge considered the merits of the 2010 claim. After finding that the evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2013), and that claimant was entitled to the presumption that his simple clinical pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b) (2013), the administrative law judge determined that the evidence did not establish that claimant was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2013), but it did establish the existence of complicated pneumoconiosis, and claimant's entitlement to the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 (2013). Accordingly, the administrative law judge awarded benefits.

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[1] The Department of Labor revised the regulations at 20 C.F.R. Parts 718 and 725 to implement the 2010 amendments to the Act, eliminate unnecessary or obsolete provisions, and make technical changes to certain regulations. 78 Fed. Reg. 59,102 (Sept. 25, 2013) (to be codified at 20 C.F.R. Parts 718 and 725). The revised regulations became effective on October 25, 2013. *Id.* Unless otherwise identified, a regulatory citation in this decision refers to the regulation as it appears in the September 25, 2013 Federal Register. Citations to the April 1, 2013 version of the Code of Federal Regulations will be followed by "(2013)."

[2] Claimant's previous claim, filed on October 16, 2008, was denied as abandoned on September 15, 2009. Director's Exhibit 1.

[3] The record indicates that claimant's coal mine employment was in Virginia and West Virginia. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

[4] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

On appeal, employer contends that the administrative law judge erred in finding that the evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2013). Employer also argues that the administrative law judge erred in finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 (2013). Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief. In a reply brief, employer reiterates its previous contentions.

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).

In order to establish entitlement to benefits in a 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 (2013). Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.,* 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied by reason of abandonment. Director's Exhibit 1. Under the regulations, a denial "by reason of abandonment" is "deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c) (2013). Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing at least one of the elements of entitlement. 20 C.F.R. §725.309(c).

Simple Clinical Pneumoconiosis

Employer initially argues that the administrative law judge erred in finding that the new evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2013). Pursuant to 20 C.F.R. §718.202(a)(1) (2013), the administrative law judge considered seven interpretations of three new x-rays taken on January 14, 2011, October 11, 2011, and December 8, 2011. In her consideration of the x-ray evidence, the administrative law judge properly accorded greater weight to the interpretations rendered by physicians with the dual qualifications of B reader and Board-

certified radiologist. *See Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 15.

While Dr. Wheeler, a B reader and Board-certified radiologist, interpreted the January 14, 2011 x-ray as negative for pneumoconiosis, Director's Exhibit 16, Drs. Alexander and DePonte, each dually qualified as a B reader and Board-certified radiologist, and Dr. Gaziano, a B reader, interpreted the x-ray as positive for the disease. Director's Exhibits 13, 14, 17. Because a majority of the best-qualified physicians rendered positive interpretations of the January 14, 2011 x-ray, the administrative law judge permissibly found that this x-ray is positive for pneumoconiosis. *Sheckler*, 7 BLR at 1-131; Decision and Order at 15.

Dr. Meyer, a B reader and Board-certified radiologist, interpreted the October 11, 2011 x-ray as positive for pneumoconiosis. Employer's Exhibit 2. Because there are no other interpretations of the October 11, 2011 x-ray, the administrative law judge found that this x-ray is positive for pneumoconiosis.[5] Decision and Order at 15.

Although Dr. Rosenberg, a B reader, interpreted the December 8, 2011 x-ray as negative for pneumoconiosis, Employer's Exhibit 1, Dr. DePonte, a B reader and Board-certified radiologist, interpreted the x-ray as positive for the disease. Claimant's Exhibit 3. The administrative law judge acted within her discretion in crediting Dr. DePonte's positive interpretation of the December 8, 2011x-ray, over Dr. Rosenberg's negative interpretation, based upon Dr. DePonte's superior qualifications. *Sheckler*, 7 BLR at 1-131; Decision and Order at 16. The administrative law judge, therefore, permissibly found that the December 8, 2011 x-ray is positive for pneumoconiosis.[6] Having found that all three of the new x-rays are positive for pneumoconiosis, the administrative law judge found that the new x-ray evidence established the existence of pneumoconiosis.

Initially, employer argues that the administrative law judge erred in failing to consider Dr. Gaziano's reading of the January 14, 2011 x-ray. Although Dr. Gaziano noted a "possible tumor" and the need to "rule out carcinoma," Director's Exhibit 13, Dr. Gaziano's interpretation of the January 14, 2011 x-ray was limited to a quality reading

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[5] Although the administrative law judge noted that Dr. Antoun provided a narrative reading of the October 11, 2011 x-ray, she accurately observed that the doctor did not complete an ILO classification form, or otherwise comment on the presence or absence of pneumoconiosis. Decision and Order at 15.

[6] The administrative law judge also noted that Dr. Antoun provided a narrative reading of an April 16, 2012 x-ray that was positive for pneumoconiosis. Decision and Order at 14; Claimant's Exhibit 5.

made on behalf of the Department of Labor (DOL). 20 C.F.R. §718.102(b),(e) (2013). As a result, Dr. Gaziano did not classify any of the abnormalities that he observed in accordance with the ILO requirements. Furthermore, employer did not submit Dr. Gaziano's reading as affirmative or rebuttal evidence. *See* 20 C.F.R. §725.414 (2013); Employer's 2012 Evidence Summary Form. We, therefore, reject employer's contention that the administrative law judge erred in failing to consider the notations in Dr. Gaziano's quality reading in determining whether the new x-ray evidence established the existence of simple clinical pneumoconiosis.

Employer further contends that the administrative law judge erred in not addressing the potential alternative etiologies that Drs. DePonte, Alexander, and Meyer listed on their x-ray reports. We disagree. Although Drs. DePonte, Alexander, and Meyer noted potential, alternative etiologies for the *large* opacities that they observed on claimant's x-rays, none of the physicians provided an alternative etiology for his/her finding of simple clinical pneumoconiosis. Director's Exhibits 14, 17; Claimant's Exhibit 3; Employer's Exhibit 2. Moreover, contrary to employer's argument, the administrative law judge properly considered the number of x-ray interpretations, along with the readers' qualifications, and the actual readings in finding that the new x-ray evidence established the existence of simple clinical pneumoconiosis. *See Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); *see also Wheatley v. Peabody Coal Co.*, 6 BLR 1-1214 (1984); *see generally Gober v. Reading Anthracite Co.*, 12 BLR 1-67 (1988). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the new x-ray evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) (2013).

Employer also argues that the administrative law judge erred in finding that the new medical opinion evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) (2013). The administrative law judge considered the two new medical opinions from Drs. Forehand and Rosenberg. Although Dr. Forehand opined that claimant suffers from simple clinical pneumoconiosis, Director's Exhibit 13, Dr. Rosenberg opined that claimant does not suffer from the disease. Employer's Exhibit 1. In weighing the conflicting evidence, the administrative law judge found that Dr. Forehand's diagnosis of pneumoconiosis was consistent with her findings regarding the weight of the x-ray evidence. Decision and Order at 16. Conversely, the administrative law judge accorded less weight to Dr. Rosenberg's opinion, finding it contrary to "the overwhelming preponderance of the x-ray evidence." *Id.* The administrative law judge, therefore, found that the new medical opinion evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) (2013).

Employer contends that the administrative law judge erred in crediting Dr. Forehand's opinion over that of Dr. Rosenberg, because Dr. Forehand relied upon an inflated coal mine employment history. Employer accurately notes that, while the administrative law judge credited claimant with thirteen years of coal mine employment, Dr. Forehand relied upon a coal mine employment history of twenty years.[7] Decision and Order at 4; Director's Exhibit 13. However, Dr. Forehand's reliance upon an inaccurate coal mine employment history would not undermine his diagnosis of simple clinical pneumoconiosis because his finding of clinical pneumoconiosis was not based upon the length of claimant's coal mine employment. Instead, the administrative law judge found that Drs. Rosenberg and Forehand, in determining whether claimant suffered from simple clinical pneumoconiosis, relied upon the x-ray evidence. Decision and Order at 16. The administrative law judge permissibly found that the December 8, 2011 x-ray that Dr. Rosenberg relied upon as negative for pneumoconiosis was interpreted as positive for pneumoconiosis by a better qualified physician, thus calling into question the reliability of Dr. Rosenberg's opinion. *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 16. The administrative law judge also found that in diagnosing simple clinical pneumoconiosis, Dr. Forehand relied upon his positive interpretation of a January 14, 2011 x-ray, a finding that the administrative law judge noted was consistent with her weighing of the x-ray evidence. The administrative law judge permissibly credited Dr. Forehand's opinion, that claimant suffers from simple clinical coal workers' pneumoconiosis because she found that it was consistent with the x-ray evidence.[8] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *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, 2-275-276 (4th Cir. 1997). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the new medical opinion evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) (2013).

As employer does not otherwise challenge the administrative law judge's finding that the new medical evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2013), this finding is affirmed. In

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[7] Dr. Rosenberg similarly relied upon a twenty year coal mine employment history. Employer's Exhibit 1.

[8] In addition to diagnosing simple clinical pneumoconiosis, Dr. Forehand diagnosed legal pneumoconiosis, based upon claimant's shortness of breath and work history. Director's Exhibit 13. The administrative law judge, however, found that Dr. Forehand's "conclusory statements" were not sufficient to support a finding of legal pneumoconiosis. Decision and Order at 17.

light of our affirmance of the administrative law judge's findings that the new evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2013), *see Compton*, 211 F.3d at 211, 22 BLR at 2-174*Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), we affirm the administrative law judge's finding that the new evidence of record established that one of the applicable conditions of entitlement has changed since the date of the denial of claimant's prior claim. 20 C.F.R. §725.309(c).

Complicated Pneumoconiosis

Employer next argues that the administrative law judge erred in finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 (2013). Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304 (2013), there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which (A) when diagnosed by x-ray, yields an opacity greater than one centimeter in diameter that would be classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, would be a condition that could reasonably be expected to reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304 (2013).

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 (2013), 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 2-214, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc). X-ray evidence that displays opacities greater than one centimeter in diameter loses its probative force only when other evidence affirmatively shows that the opacities are not there or are not what they appear to be. *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256, 22 BLR 2-93, 2-101 (4th Cir. 2000).

Section 718.304(a) (2013)

Pursuant to 20 C.F.R. §718.304(a) (2013), the administrative law judge considered eight interpretations of four x-rays dated March 19, 2009, January 14, 2011, October 11, 2011, and December 8, 2011. While Dr. DePonte, a B reader and Board-certified radiologist, interpreted the March 19, 2009 x-ray as positive for complicated pneumoconiosis, Claimant's Exhibit 1, Dr. Scott, an equally qualified physician, interpreted the x-ray as negative for the disease. Director's Exhibit 1. Because the March 19, 2009 x-ray was interpreted as both positive and negative for complicated

pneumoconiosis by equally qualified physicians, the administrative law judge found that the evidence was "in equipoise." Decision and Order at 23.

Drs. DePonte and Alexander, each dually qualified as a B reader and Board-certified radiologist, and Dr. Forehand, a B reader, interpreted the January 14, 2011 x-ray as positive for complicated pneumoconiosis. Director's Exhibits 13, 14, 17. Although Dr. Wheeler, a B reader and Board-certified radiologist, interpreted the x-ray as negative for complicated pneumoconiosis, the doctor identified a 3.5 centimeter mass that he thought was compatible with inflammatory disease or cancer. Director's Exhibit 16. Because a majority of the best-qualified physicians interpreted the January 14, 2011 x-ray as positive for complicated pneumoconiosis, the administrative law judge found that the January 14, 2011 x-ray supported a finding of complicated pneumoconiosis. Decision and Order at 22.

Dr. Meyer, a B reader and Board-certified radiologist, interpreted the October 11, 2011 x-ray as positive for a Category A opacity, but noted that the mass could be consistent with sarcoidosis. Employer's Exhibit 2. The administrative law judge found that this x-ray was equivocal with respect to the presence of complicated pneumoconiosis. Decision and Order at 22.

Finally, while Dr. DePonte, a B reader and Board-certified radiologist, interpreted the December 8, 2011 x-ray as positive for complicated pneumoconiosis, Claimant's Exhibit 3, Dr. Rosenberg, a B reader, interpreted the x-ray as negative for the disease. Employer's Exhibit 1. The administrative law judge credited Dr. DePonte's positive interpretation of the December 8, 2011 x-ray, over Dr. Rosenberg's negative interpretation, based upon Dr. DePonte's superior radiological qualifications. Decision and Order at 22.

The administrative law judge also addressed the evidence regarding other possible etiologies for the large opacities identified on claimant's x-rays:

> I find that the suggestions by Dr. Wheeler, Dr. Rosenberg, and Dr. Meyer that the masses that they saw on x-rays were the result of a variety of conditions are speculative, and without any support in the record, which does not document any diagnoses or treatment for any of these diseases. Nor did Dr. Wheeler, Dr. Rosenberg, or Dr. Meyer explain why a finding of granulomatous disease or sarcoid would necessarily rule out a diagnosis of pneumoconiosis, or in other words, why they could not co-exist.

Decision and Order at 25. Noting that the presence of simple clinical pneumoconiosis was established by the evidence of record, the administrative law judge found that the failure of Drs. Wheeler and Rosenberg to diagnose simple clinical pneumoconiosis

undermined their respective negative interpretations for complicated pneumoconiosis. Decision and Order at 24-15.

Having found that the January 14, 2011 and December 8, 2011 x-rays were positive for complicated pneumoconiosis, and that the evidence regarding the remaining two x-rays taken on March 19, 2009 and October 11, 2011 was "in equipoise" and equivocal, the administrative law judge found that the x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a) (2013). Decision and Order at 23.

Employer argues that the administrative law judge erred in her consideration of the x-ray interpretations of Drs. Wheeler, Rosenberg, and Meyer. We disagree. The administrative law judge rationally found the interpretations of Drs. Wheeler, Rosenberg, and Meyer to be speculative and equivocal, as each identified granulomatous disease or sarcoidosis as the more likely cause of the large opacities on claimant's x-rays, when there was no evidence in the record that claimant had ever been diagnosed with, or treated for, either of those diseases. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010); Decision and Order at 25; Director's Exhibit 16; Employer's Exhibits 1, 2. We further note that employer does not challenge the administrative law judge's additional finding that Drs. Wheeler, Rosenberg, and Meyer did not adequately explain why claimant's x-ray could not reflect the presence of both granulomatous disease and complicated pneumoconiosis.

Moreover, the administrative law judge permissibly found that the failure of Drs. Wheeler and Rosenberg to find the presence of simple clinical pneumoconiosis on x-ray, contrary to the administrative law judge's finding, diminished the credibility of their x-ray readings. *See 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). For the reasons discussed above, the administrative law judge permissibly accorded less weight to the negative x-ray interpretations of Drs. Wheeler, Rosenberg, and Meyer.[9] *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274.

Employer also generally contends that the administrative law judge erred in finding the x-ray evidence to be positive for complicated pneumoconiosis, impermissibly "counted heads," and failed to explain her finding of complicated pneumoconiosis in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as

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[9] For the reasons previous discussed, *see* pp. 4-5, *supra*, we also reject employer's contention that the administrative law judge erred in failing to consider Dr. Gaziano's quality reading of the January 14, 2011 x-ray.

incorporated into the Act by 30 U.S.C. §932(a). Contrary to employer's contention, in determining whether the x-ray evidence established the existence of complicated pneumoconiosis, the administrative law judge properly considered the number of x-ray interpretations, along with the readers' qualifications, the dates of the x-rays, and the actual readings. *See Dixon*, 8 BLR at 1-346; *Roberts*, 8 BLR at 1-213. Consequently, we affirm the administrative law judge's finding that the x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a) (2013).[10]

Section 718.304(c)

Relevant to 20 C.F.R. §718.304(c) (2013), the administrative law judge considered Dr. Rosenberg's medical opinion that claimant does not suffer from complicated pneumoconiosis.[11] Employer's Exhibits 1, 3. Dr. Rosenberg suggested that claimant's abnormalities may represent sarcoidosis, vasculitis, or an atypical microbacterial infection. Employer's Exhibit 3 at 19-22. The administrative law judge discredited Dr. Rosenberg's opinion, finding that it was speculative and equivocal. Decision and Order at 25.

Employer argues that the administrative law judge erred in her consideration of

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[10] The administrative law judge noted that there was no biopsy evidence to consider pursuant to 20 C.F.R. §718.304(b) (2013). Decision and Order at 23.

[11] In her consideration of the evidence under 20 C.F.R. §718.304(c) (2013), the administrative law judge also considered two interpretations of a January 19, 2011 CT scan. Although Dr. Petrozzo interpreted the January 19, 2011 CT scan as revealing densities in claimant's lungs consistent with complicated pneumoconiosis, the doctor did not indicate the size of the densities. Director's Exhibit 14. Although Dr. Meyer classified the nodules that he observed on the January 19, 2011 CT scan as "possible complicated coal workers' pneumoconiosis," he noted that the extent and distribution of the abnormalities were atypical for the disease. Employer's Exhibit 2. Dr. Meyer noted that sarcoidosis was a "strong [alternative] consideration" and recommended "clinical correlation." *Id.* The administrative law judge found that the interpretations of the January 19, 2011 CT scan were "too equivocal to support a finding of complicated pneumoconiosis on their own," but were also insufficient to refute the existence of the disease. Decision and Order at 23. Employer's statements do not raise any substantive issue or identify any specific error on the part of the administrative law judge in her consideration of the CT scan evidence pursuant to 20 C.F.R. §718.304(c). *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). We, therefore, affirm the administrative law judge's consideration of the CT scan evidence pursuant to 20 C.F.R. §718.304(c) (2013).

Dr. Rosenberg's opinion. We disagree. In this case, the administrative law judge permissibly found that Dr. Rosenberg's opinion was insufficient to cause the x-ray evidence establishing complicated pneumoconiosis at 20 C.F.R. §718.304(a) to lose force, as the opinion was unsupported by any evidence in the record that claimant suffered from one of Dr. Rosenberg's alternative diagnoses. *See Cox*, 602 F.3d at 285, 24 BLR 2-284; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; Decision and Order at 25. As support for this finding, the administrative law judge correctly noted that, while "Dr. Rosenberg speculated that [claimant's] x-ray findings were the result of sarcoidosis, . . . there is no evidence in the record to suggest that [claimant] has ever been diagnosed or treated for sarcoidosis, or any other granulomatous disease." Decision and Order at 25. The administrative law judge, therefore, permissibly found that Dr. Rosenberg's opinion, the only opinion contrary to the weight of the positive x-ray evidence,[12] was insufficient to establish that the large opacities revealed by the x-ray evidence were not complicated pneumoconiosis. We, therefore, affirm the administrative law judge's consideration of the medical evidence pursuant to 20 C.F.R. §718.304(c) (2013).

Weighing together all of the evidence under 20 C.F.R. §718.304(a),(c) (2013), the administrative law judge found that claimant "met his burden to establish that he has a condition of such severity that it would produce opacities greater than one centimeter in diameter on x-ray due to coal dust exposure . . . ." Decision and Order at 26. Employer argues that the administrative law judge shifted the burden to employer to establish the absence of complicated pneumoconiosis. Employer's Brief at 32. We reject employer's argument, as the administrative law judge made permissible credibility determinations, without shifting the burden of proof. *See Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Melnick*, 16 BLR at 1-33-34. We, therefore, affirm the administrative law judge's finding that claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 (2013). *See Scarbro,* 220 F.3d at 255, 22 BLR at 2-100.

20 C.F.R. §718.203(b)

Employer also argues that the administrative law judge erred in failing to address employer's evidence regarding rebuttal of the presumption that claimant's complicated

[12] Although employer challenges the administrative law judge's consideration of Dr. Forehand's opinion, a review of the administrative law judge's decision shows that she did not accord any weight to Dr. Forehand's opinion at 20 C.F.R. §718.304(c) (2013). In fact, as employer concedes, Dr. Forehand did not offer an opinion on the issue of complicated pneumoconiosis. Director's Exhibit 13; Employer's Brief at 31. In light of the above, we discern no error in the administrative law judge's consideration of Dr. Forehand's medical report at 20 C.F.R. §718.304(c) (2013).

pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b) (2013). Because the administrative law judge credited claimant with over ten years of coal mine employment, claimant is entitled to a rebuttable presumption that his complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b) (2013). Employer contends that Dr. Rosenberg's opinion is sufficient to establish rebuttal of the presumption, and that the administrative law judge violated the APA in failing to discuss it before holding that the presumption was unrebutted. We disagree. We have affirmed the administrative law judge's finding that Dr. Rosenberg's opinion regarding the etiology of the large opacities is speculative, and, therefore, not entitled to any weight. *See* discussion, p. 11, *supra.* Because we have affirmed the administrative law judge's discrediting of Dr. Rosenberg's opinion regarding the source of the large opacities, the doctor's opinion is insufficient to support a finding of rebuttal of the Section 718.203(b) presumption. Since employer points to no other evidence that could establish rebuttal, we hold that the administrative law judge was not required to discuss possibly relevant, but insubstantial evidence before holding that employer failed to rebut the presumption. 20 C.F.R. §718.203(b) (2013).

Commencement of Benefits

Employer contends that the administrative law judge erred in finding that claimant is entitled to benefits as of October 2010.[13] In a case where a miner is found entitled to the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 (2013), the fact-finder must consider whether the evidence of record establishes an onset date of the miner's complicated pneumoconiosis. *See Williams v. Director, OWCP*, 13 BLR 1-28 (1989). If the evidence does not reflect the onset date for complicated pneumoconiosis, the date for the commencement of benefits is the month during which the claim was filed, unless the evidence affirmatively establishes that the miner had only simple pneumoconiosis for any period subsequent to the date of filing, in which case benefits must commence "following the period of simple pneumoconiosis." *Williams*, 13 BLR at 1-30. In a subsequent claim, no benefits may be paid for any period

[13] The administrative law judge found that claimant's claim was filed in October 2010. Decision and Order at 3. We agree with employer that the month in which claimant filed his claim is November 2010, as the district director did not stamp claimant's claim as received until November 2, 2010. Director's Exhibit 3. The regulations require that, except in circumstances not relevant to the present case, "[a] claim submitted by mail shall be considered filed as of the date of delivery . . . ." 20 C.F.R. §725.303(b) (2013). In this case, although claimant's claim was postmarked October 21, 2010, the district director's office did not receive the claim until November 2, 2010. Director's Exhibit 3. Consequently, we agree with employer that, under 20 C.F.R. §725.303(b) (2013), the month of filing is November 2010.

prior to the date upon which the order denying the prior claim became final. 20 C.F.R. §725.309(d)(5).

In her Decision and Order, the administrative law judge summarily held that claimant is entitled to benefits commencing in October 2010. Decision and Order at 26. Because the administrative law judge did not make a finding as to the month in which the existence of complicated pneumoconiosis was established, we vacate her benefits commencement finding, and remand this case to the administrative law judge for further consideration of this issue.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge