U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 14-0176 BLA

RHONDA SUE GOOD (Widow of HOMER GOOD) Claimant-Respondent v. GLEN ALLEN MINING, INCORPORATED and EMPLOYERS INSURANCE OF WAUSAU Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 02/27/2015 DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Survivor's Benefits of Stephen M. Reilly, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikevillle, Kentucky, for claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer/carrier.

Before: HALL, Acting Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order on Remand Awarding Survivor's Benefits (2010-BLA-05646) of Administrative Law Judge Stephen M. Reilly, rendered on a claim filed on September 18, 2009, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2012) (the Act).

This case is before the Board for the second time. In the administrative law judge's initial decision, he credited the miner with twenty-four years of coal mine employment, at least fifteen of which were in underground mines, or in conditions substantially similar to those in an underground mine. The administrative law judge found that the evidence was sufficient to establish the existence of simple and complicated pneumoconiosis, but insufficient to establish the existence of legal pneumoconiosis. Based on his finding of complicated pneumoconiosis, the administrative law judge determined that claimant[1] invoked the irrebuttable presumption of death due to pneumoconiosis at 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

Pursuant to employer's appeal, the Board vacated the administrative law judge's finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and remanded the case to the administrative law judge to determine whether new evidence, in the form of a complaint filed against Dr. Dennis with the Kentucky Board of Medical Licensure, should be admitted into the record. *Good v. Glen Allen Mining, Inc.*, BRB No. 12-0661 BLA, slip op. at 3 (July 30, 2013) (unpub.). On remand, the administrative law judge found that the documents related to Dr. Dennis's medical license suspension were not admissible because employer did not submit them at the earliest opportunity. The administrative law judge concluded, in the alternative, that the evidence would not impact his decision to credit Dr. Dennis's diagnosis of complicated pneumoconiosis. Therefore, the administrative law judge reinstated the initial award of survivor's benefits.

On appeal, employer argues that the administrative law judge erred in failing to consider the effect of the behavior described in the complaint against Dr. Dennis on the credibility of his testimony, and in finding that the miner had complicated pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response unless requested to do so by the Board.

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.[2] 33 U.S.C. §921(b)(3), as incorporated by 30

[1] Claimant is the widow of the miner, Homer Good, who died on June 23, 2006. Director's Exhibit 10.

[2] The record reflects that the miner's last coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

I. Exclusion of the Complaint and the Emergency Order of Suspension

On remand, the administrative law judge complied with the Board's instructions and first considered whether the evidence related to Dr. Dennis's license suspension should be admitted into the record. The administrative law judge observed that the Kentucky Board of Medical Licensure issued the Complaint and Emergency Order of Suspension against Dr. Dennis on August 17, 2012 – twelve days prior to the issuance of the administrative law judge's Decision and Order on August 29, 2012. Decision and Order on Remand at 3. The administrative law judge also noted that employer mailed its Notice of Appeal to the Board on September 19, 2012, and submitted a Motion to Remand on October 29, 2013, in which employer argued, for the first time, that the administrative law judge was required to consider whether the behavior described in the documents issued by the Kentucky Board of Medical Licensure affected the credibility of Dr. Dennis's medical opinion. *Id*. Based on these facts, the administrative law judge found:

> It is well established that issues should not be raised for the first time to the appellate body. Reconsideration would have been the appropriate avenue to have the new evidence before me. Time to file for reconsideration ran before [employer] raised the issue for the first time. Therefore, I do not admit the evidence at this time.

Decision and Order on Remand at 3. In the alternative, the administrative law judge determined that the evidence of Dr. Dennis's suspension from the practice of medicine would have no impact on his decision, as Dr. Dennis was licensed when he rendered his medical opinion. *Id*.

Employer contends that the administrative law judge erred by focusing on whether Dr. Dennis was licensed when he diagnosed complicated pneumoconiosis, rather than determining whether the behavior that resulted in the suspension of Dr. Dennis's license affected the credibility of his medical opinion. However, employer has not alleged the presence of any error in the administrative law judge's finding that the evidence should not be admitted, because employer failed to timely request its inclusion in the record. Accordingly, we affirm, as unchallenged by employer on appeal, the administrative law judge's exclusion of the evidence of Dr. Dennis's medical license suspension, and his determination that, absent the timely submission of this evidence, he need not reach employer's contentions regarding the effect of the suspension on the credibility of Dr.

Dennis's diagnosis of complicated pneumoconiosis.[3] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

II. Complicated Pneumoconiosis

Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner's death was due to pneumoconiosis if the miner was suffering from a chronic dust disease of the lung which (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). 20 C.F.R. §718.304. The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption. 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 the evidence at subsections (a), (b), and (c) before determining whether invocation of the irrebuttable presumption pursuant to 20 C.F.R. §718.304 has been established. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 387, 21 BLR 2-615, 624 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-1-34 (1991) (en banc).

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that a claimant may establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b) if the autopsy evidence shows massive lesions or, in the alternative, if the nodules found on autopsy would appear as greater than one centimeter on x-ray. *See Gray*, 176 F.3d at 387, 21 BLR at 2-624. An autopsy report need not contain the specific words "massive" or "lesions" in order to satisfy the requirements at 20 C.F.R. §718.304(b). *See Pittsburg & Midway Coal Mining Co. v. Director, OWCP* [*Cornelius*], 508 F.3d 975, 986, 24 BLR 2-72, 89 (11th Cir. 2007); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 365 n.4, 23 BLR 2-374, 2-385 n.4 (4th Cir. 2006) (autopsy report diagnosing "[c]oal worker type pneumoconiosis, complicated type, with progressive massive fibrosis" sufficient to invoke the presumption pursuant to 20 C.F.R. §718.304(b)). In addition, the term "progressive massive fibrosis" is generally considered to be equivalent to the term complicated pneumoconiosis and,

[3] In light of our affirmance of the administrative law judge's evidentiary ruling as unchallenged on appeal, we will not address employer's argument that the administrative law judge erred in finding, in the alternative, that the suspension of Dr. Dennis's medical license did not impact the credibility of his opinion. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

when there is a diagnosis of progressive massive fibrosis, it equates to a diagnosis of massive lesions resulting from pneumoconiosis. *See Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 1359, 20 BLR 2-227, 2-228 (4th Cir. 1996) (noting that complicated pneumoconiosis is known "by its more dauntingly descriptive name, 'progressive massive fibrosis.'").

The record in this case contains autopsy reports from Drs. Dennis and Oesterling, and their deposition testimony. Dr. Dennis performed the autopsy and, in a report dated August 14, 2006, he observed that on gross examination:

> The right lung . . . pleural surface is marked by macular development greater than 2 [centimeters] in diameter. Fibrinous exudative change is present on the surface as well as hemorrhagic change with organization. A section of the superior aspect of the resected lung shows dense black pigment and compression and collapse of the alveolar spaces. A representative section of the upper lobes pleural surface is submitted in cassettes A-C. . . . Emphysematous changes are appreciated as well as black pigment deposition. Some cystic change noted. . . . The hilar node is submitted in cassette H. The left lung . . . [shows] [a] variable pattern of pigment deposition . . . with macules measuring 3 to 5 [centimeters] in diameter in focal areas . . . The lung is sectioned and shows emphysematous changes. Cystic dilatation . . . with loss of pulmonary tissue. Sections are submitted in cassettes I-K. The middle lobe is submitted in cassette L. Additional sections of the lower lobe are submitted in cassettes M-N.

Director's Exhibit 13 at 2. In his microscopic examination, Dr. Dennis detected the presence of "macular development greater than 2 [centimeters] in diameter, black pigment clusters in alveolar spaces, and fibrosis in the interstitium." *Id*. at 2. Based on these findings, Dr. Dennis rendered, in relevant part, pathological diagnoses of "[a]nthracosilicosis, moderate to severe, with progressive massive fibrosis," and "[m]acular development greater than 3 [centimeters] in diameter with brisk deposits of anthracosilicotic pigment and silica particles scattered throughout the entire lung." *Id*. Dr. Dennis concluded that the miner "died a pulmonary death with bronchopneumonia, pulmonary congestion and edema, superimposed on a weakened lung by anthracosilicosis, [and] progressive massive fibrosis." *Id*. at 3.

At Dr. Dennis's deposition, conducted on January 24, 2011, he stated that the date recorded on his autopsy report – August 14, 2006 – "is not correct . . . . That may be the day they typed this up or something of that nature. But that's incorrect." Employer's Exhibit 1 at 4. Dr. Dennis indicated that he performed the autopsy on June 23 or June 24, 2006. *Id*. He also reported that "to the best of [his] knowledge," he only examined the

miner's heart and lungs. *Id*. at 4-5. Dr. Dennis further observed that he "apparently" had removed the heart and lungs, and that he conducted the autopsy at Pikeville Medical Center. *Id*. at 5. When informed that claimant reported that the autopsy was performed at a funeral home, Dr. Dennis stated, "[t]hat's possible," and "I just don't always . . . put down exactly where and all that kind of stuff." *Id*. at 6. He further maintained that "in [20]06, I was doing most of them here at the hospital, and it would have been unusual or a variation on the mean[s] of performance, but it's still the same procedure, no matter where it was done." *Id*. He also acknowledged that he was unaware that the death certificate identified the cause of the miner's death as massive head trauma suffered in a car accident. *Id*. at 13. As to his diagnosis of macular development greater than two centimeters in diameter, Dr. Dennis explained that the macules that he observed in the miner's lungs consisted of fibrous connective tissue caused by an inflammatory reaction to coal dust. *Id*. at 7, 13. Dr. Dennis reiterated his determination that the macules were greater than three centimeters in diameter and stated that his diagnosis of progressive massive fibrosis was based on the presence of anthracosilicotic pigment and silica particles, with the size of the macules being the most important indicator. *Id*. at 11.

Dr. Oesterling submitted a pathology report dated October 14, 2010, in which he reviewed Dr. Dennis's autopsy report and the slides that Dr. Dennis prepared as part of the autopsy. Employer's Exhibit 2. Dr. Oesterling concluded that the slides established the presence of "mild coal workers' pneumoconiosis, which was micronodular and macular." *Id*. at 3. Dr. Oesterling further observed: "None of the sections approaches 2 [centimeters] in diameter, and thus could not contain a lesion as [Dr. Dennis] has described. Moreover, they do not show coal dust. Thus[,] the description of the gross findings is not substantiated within the tissue cross sections." *Id*. Dr. Oesterling also disputed Dr. Dennis's conclusion that the amount of coal dust viewed in the miner's hilar lymph node and hilum indicated that the miner had experienced heavy exposure. *Id*. In addition, Dr. Oesterling took issue with Dr. Dennis's diagnosis of progressive massive fibrosis, stating: "This entity occurs when we have heavy micro-nodular distribution of lesions that begin to fuse into aggregates measuring 2 [centimeters]. It is not a macular disease process as Dr. Dennis infers." *Id*. at 5. At his deposition, taken on July 14, 2011, Dr. Oesterling reiterated his findings. Employer's Exhibit 3 at 6-19.

Subsequent to Dr. Oesterling's deposition, Dr. Dennis submitted a supplemental report dated September 30, 2011, in which he stated that a review of Dr. Oesterling's report and testimony did not alter his pathological diagnoses. Claimant's Exhibit 1. He also observed that Dr. Oesterling "was not able to see the actual progressive nodules seen only by myself." *Id*. Dr. Dennis further indicated that "progressive massive fibrosis can be diagnosed grossly and in this case . . . only the gross examination would be able to document these as I have done." *Id*.

Upon considering the reports relevant to the existence of complicated pneumoconiosis, the administrative law judge stated:

> I give greater weight to Dr. Dennis'[s] opinion as to the existence of progressive massive fibrosis and less weight to Dr. Oesterling's opinion. Dr. Dennis diagnosed progressive massive fibrosis both microscopically and grossly. Dr. Dennis also stated that he had the advantage of diagnosing the disease grossly, whereas Dr. Oesterling did not have this advantage. Dr. Oesterling did not diagnose progressive massive fibrosis because he did not find sufficient black pigment and did not find nodules measuring up to 2 [centimeters]. Dr. Oesterling did, however, diagnose micronodular and macular pneumoconiosis.
>
> I give greater weight to Dr. Dennis'[s] opinion as the prosector in this case, not just because he was the prosector, but because he found greater evidence of progressive massive fibrosis when viewing the body grossly.

Decision and Order on Remand at 9-10. The administrative law judge further found that Dr. Oesterling's requirement that the miner have micronodular coalescences measuring at least two centimeters, a size standard that the Department of Labor considered and rejected, detracted from the probative value of his opinion. *Id*. at 10, *citing* 65 Fed.Reg. 79,936 (Dec. 20, 2000). Based on these findings, the administrative law judge determined that claimant established the existence of complicated pneumoconiosis and, therefore, invoked the irrebuttable presumption of death due to pneumoconiosis at 20 C.F.R. §718.304. Decision and Order on Remand at 10.

Employer argues that the administrative law judge erred in according greatest weight to Dr. Dennis's diagnosis of progressive massive fibrosis at 20 C.F.R. §718.304(b). In support of this contention, employer observes that Dr. Dennis was unable to report with certainty the actual date and location of the autopsy, was unaware that the miner's death certificate listed massive head trauma as the immediate cause of death, and did not have access to the miner's medical history. Employer also alleges that Dr. Dennis diagnosed progressive massive fibrosis without identifying lesions or fibrous nodules greater than one centimeter in diameter, and without indicating that the macules he viewed would appear as opacities greater than one centimeter in diameter on x-ray. Employer further contends that Dr. Dennis's diagnosis is incorrect because, as Dr. Oesterling explained, progressive massive fibrosis is not diagnosed on the basis of macules alone, but requires the presence of fibrotic nodules. In addition, employer contends that the administrative law judge erred in crediting Dr. Dennis's opinion over the contrary opinion of Dr. Oesterling merely because Dr. Dennis was the prosector. Employer asserts that the administrative law judge also did not address Dr. Oesterling's statement that Dr. Dennis's findings on gross examination should have been reflected in

the tissue slides, but were not. Finally, employer argues that the administrative law judge omitted the requisite equivalency determination.[4] Employer's contentions have merit.

In a post-hearing brief filed before the administrative law judge, employer made the same arguments that he now makes before the Board that Dr. Dennis's uncertainty about the date and location of the autopsy, his lack of awareness that the miner died in a car accident, and his vague testimony as to whether he viewed the miner's body, and removed the heart and lungs for autopsy, were flaws that detracted from the credibility of his autopsy report. Post-Hearing Brief on Behalf of Responsible Operator at 3-4. The administrative law judge observed, "Dr. Dennis testified that the original date on his autopsy report was inaccurate because he performed the autopsy shortly after [the miner's] death on approximately June 24, 2006." Decision and Order at 5 n.2, *citing* Employer's Exhibit 1 at 4. The administrative law judge also noted Dr. Dennis's statement that the miner died a pulmonary death and stated, "[a]lthough Dr. Dennis opined that [the miner] died a pulmonary death, he acknowledged he only examined the heart and lung. Furthermore, Dr. Dennis was not the official responsible for designating the cause of death." Decision and Order 6 n.3. The administrative law judge did not address, however, employer's contention that the anomalies in Dr. Dennis's description of the autopsy process, and his opinion as to the cause of the miner's death, affected the credibility of his diagnosis of progressive massive fibrosis. Thus, the administrative law judge did not comply with the Administrative Procedure Act (APA), 5 U.S.C. §500 *et seq*., as incorporated into the Act by 30 U.S.C. §932(a), which provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Employer's remaining allegations of error focus on whether the administrative law judge properly found that the diagnoses and observations set forth in Dr. Dennis's autopsy report are sufficient to establish the existence of progressive massive fibrosis, or "massive lesions," at 20 C.F.R. §718.304(b). Although case law has recognized that a diagnosis of progressive massive fibrosis equates to a diagnosis of massive lesions at 20 C.F.R. §718.304(b), *see Rutter*, 86 F.3d at 1359, 20 BLR at 2-228, neither the statute, nor

[4] Employer also argues that the administrative law judge failed to weigh all of the relevant evidence together. We reject this allegation of error, as employer does not identify any evidence, other than the reports and deposition testimony of Drs. Dennis and Oesterling, that is relevant to the existence of complicated pneumoconiosis and invocation of the irrebuttable presumption set forth in 20 C.F.R. §718.304.

the regulations, contains a standard defining progressive massive fibrosis.[5] In determining that Dr. Dennis's opinion was entitled to greater weight, the administrative law judge identified factors that, on their face, appear to provide valid rationales for his credibility determination, i.e., the fact that Dr. Dennis had the opportunity to examine the miner's lungs grossly and measure the size of the macular development that he saw, and Dr. Dennis's observation, both grossly and microscopically, of fibrosis and macular development exceeding two centimeters in diameter. *See Gruller v. BethEnergy Mines, Inc.*, 16 BLR 1-3 (1991); Decision and Order on Remand at 9-10; Director's Exhibit 13. However, the administrative law judge did not resolve the fundamental conflicts between the opinions of Drs. Dennis and Oesterling; namely, whether progressive massive fibrosis can be diagnosed based on the presence of macular development, and whether Dr. Dennis's gross examination was corroborated by the tissue slides.

Dr. Dennis stated that the disease was present, based on his finding of macular development exceeding three centimeters in diameter on gross examination, and two centimeters in diameter on microscopic examination. Director's Exhibit 13 at 3; Employer's Exhibit 1 at 11. In addition, Dr. Dennis defined macules as areas of pigment with fibrosis that can be palpated. Employer's Exhibit 1 at 13. Dr. Oesterling espoused a different view, stating:

> [C]omplicated pneumoconiosis is more of a clinical and radiographic diagnosis and I realize also a legal diagnosis in relationship to coal workers' pneumoconiosis. It specifies that there is a lesion of one [centimeter] or greater that can be seen on x-ray.
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> Progressive massive fibrosis, however, is more of a pathologic diagnosis, and it's a condition in which there is a diffuse micronodular coal workers' pneumoconiosis, and the micronodules begin to coalesce into a larger aggregate reaching two [centimeters] in size. So progressive massive fibrosis is a very specific diagnosis related to confluent micronodules.

[5] Because progressive massive fibrosis equates to a diagnosis of massive lesions at 20 C.F.R. §718.304(b), and the Sixth Circuit does not require an equivalency determination when massive lesions are diagnosed, we reject employer's contention that the administrative law judge erred in omitting a determination of whether the macular development observed by Dr. Dennis would appear as an opacity greater than one centimeter in diameter on x-ray. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 387, 21 BLR 2-615, 2-624 (6th Cir. 1999).

Employer's Exhibit 3 at 6; *see also* Employer's Exhibit 2 at 5. Dr. Oesterling also questioned Dr. Dennis's observation of large macular developments on gross examination, maintaining that they should have been reflected on the tissue slides corresponding to those areas of the lungs, but were not.[6] Employer's Exhibit 3 at 3. He reported that the largest macules and nodules that he observed microscopically were approximately two millimeters in their greatest aspect.[7] *Id*. at 7-8. Lastly, Dr. Oesterling distinguished a macule from a micronodule as follows:

> [A macule] does not have that central fibrous collagen core; it merely has the black pigment and a matrix of nucleated fibers surrounding the tertiary respiratory bronchioles and the accompanying vascular structures.
> …
>
> A macule is something that we can see grossly due to the pigmentation. We can separate it from the surrounding tissue by a visible difference for the surrounding tissues don't have pigment. It is not a raised structure. It is not a firm structure. One cannot palpate it.

Id. at 9.

The administrative law judge's discrediting of Dr. Oesterling's opinion because he required that the coalescence of micronodules be at least two centimeters in diameter, although permissible, does not address the conflicts between the opinions of Drs. Dennis and Oesterling regarding whether progressive massive fibrosis is a macular disease or nodular disease, and whether the tissue slides are representative of the areas observed during Dr. Dennis's gross examination. Decision and Order on Remand at 9-10; *see* 65 Fed. Reg. 79,936 (Dec. 20, 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Because the administrative law judge did not resolve these conflicts, he has not complied with the APA. *See Wojtowicz*, 12 BLR at 1-165. We must

[6] Dr. Dennis indicated that cassettes A-C contained tissue samples from the macular development greater than three centimeters in diameter observed on gross examination, while cassettes I-K contained tissue samples from the macular development greater than two centimeters in diameter that was observed on gross examination. Director's Exhibit 13 at 2.

[7] Dr. Oesterling acknowledged that the hilar lymph node, measuring two centimeters by one centimeter, contained signs of early scarring and evidence of the presence of coal dust, but did not "document heavy dust exposure as Dr. Dennis has inferred." Employer's Exhibit 2 at 5.

vacate, therefore, the administrative law judge's findings pursuant to 20 C.F.R. §718.304(b), and remand this case for further consideration.

On remand, when reconsidering the autopsy evidence, the administrative law judge should address the comparative credentials of Drs. Dennis and Oesterling, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). The administrative law judge must weigh these opinions and reconsider whether claimant satisfied her burden to establish the existence of complicated pneumoconiosis, and invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.304. *See Gray*, 176 F.3d at 389, 21 BLR at 2-628-29. In rendering his findings on remand, the administrative law judge must identify and resolve all conflicts between the opinions of Drs. Dennis and Oesterling, and explain his rationale in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165. If the administrative law judge determines that claimant has not met her burden of proof at 20 C.F.R. §718.304, he must consider whether claimant has established entitlement to benefits under 20 C.F.R. §718.205(c).

Accordingly, the administrative law judge's Decision and Order Awarding Survivor's Benefits on Remand is affirmed in part, and vacated in part, and this case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge