U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0142 BLA

AL EDWARD BRANHAM	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 02/22/2018
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 Awarding Benefits of Monica Markley, Administrative Law Judge, United States Department of Labor.

John S. Honeycutt (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-05607) of Administrative Law Judge Monica Markley rendered 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). This case involves a miner's subsequent claim filed on September 24, 2010.[1]

The administrative law judge credited claimant with 25.09 years of underground coal mine employment and found that the new evidence established the existence of both simple and complicated pneumoconiosis. The administrative law judge therefore found that claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[2] Considering the old and new evidence together, the administrative law judge found that claimant established the existence of simple and complicated pneumoconiosis arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a), 718.203(b), 718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Neither claimant nor the Director, Office of Workers' Compensation Programs, filed a response brief in this appeal.[3]

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[1] The current claim is claimant's fifth. Claimant's most recent prior claim, filed on May 21, 2007, was denied by the district director on March 6, 2008, for failure to establish any of the elements of entitlement. Decision and Order at 20-21; Director's Exhibit 4. Claimant took no further action and the claim was administratively closed. *Id.*

[2] When 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 at least "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). The applicable conditions of entitlement are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Here, because the prior claim was denied for failure to establish any element of entitlement, claimant was required to establish at least one element of entitlement to obtain a merits review of his subsequent claim. *See White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004); Decision and Order at 20-21.

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established 25.09 years of underground coal mine employment and the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7, 26-27.

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.[4] 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).

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, there is an irrebuttable presumption that a miner's total disability is due to pneumoconiosis if the miner is 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;[5] 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). *See* 20 C.F.R. §718.304; *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). The United States Court of Appeals for the Fourth Circuit has held that:

> [I]f the x-ray evidence vividly displays opacities exceeding one centimeter, its probative force is not reduced because the evidence under some other prong is inconclusive or less vivid. Instead, the x-ray evidence can lose force only if other evidence affirmatively shows that the opacities are not there or are not what they seem to be, perhaps because of an intervening pathology, some technical problem with the equipment used, or incompetence of the reader.

Scarbro, 220 F.3d at 256, 22 BLR at 2-100, *see also Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283-84, 24 BLR 2-269, 2-281-82 (4th Cir. 2010) ("[C]lear evidence of large opacities would support the presumption unless the record contained 'affirmative evidence' showing either that the opacities did not exist or that they were due to something else, such as a disease other than pneumoconiosis.").

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit as claimant's last coal mine employment was in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 7.

[5] There is no biopsy evidence in this case for consideration pursuant to 20 C.F.R. §718.304(b). Decision and Order at 24.

In this case, the central issue is whether the administrative law judge reasonably determined, consistent with *Scarbro*, that the x-ray evidence of complicated pneumoconiosis did not "lose force" when weighed with the other evidence of record. *Scarbro*, 220 F.3d at 256, 22 BLR at 2-100. Relevant to 20 C.F.R. §718.304(a), the record contains four readings of an x-ray dated January 31, 2011, two readings of an x-ray dated July 11, 2011, and two readings of an x-ray dated August 2, 2011. The administrative law judge correctly noted that all of the x-ray readers in this case are dually-qualified as B readers and Board-certified radiologists, and there are an equal number of positive and negative readings of each x-ray. Decision and Order at 8-10, 21-22.

Turning first to the most recent x-ray, the administrative law judge noted that Dr. Alexander read the August 2, 2011 x-ray as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 19. In the "comments" section of the ILO form, Dr. Alexander noted "post-surgical or post-infectious changes in right apex/upper lung zone – old [tuberculosis] is not excluded" and "12 x 6 mm large opacity in [left upper zone] – could be complicated [coal workers' pneumoconiosis] but [rule out] other disease." *Id.*

Dr. Wolfe read the August 2, 2011 x-ray and indicated that there were no parenchymal or pleural abnormalities consistent with pneumoconiosis. Director's Exhibit 17. However, on the ILO form, he noted "fibrocalcific changes upper and mid lung zones bilaterally, possible nodule 1-2 cm left upper lung zone" and "suggest comparison to old studies to confirm stability and exclude neoplasm." *Id.*

Dr. Alexander also read the second most recent x-ray, dated July 11, 2011, as positive for simple and complicated pneumoconiosis, Category A. Claimant's Exhibit 1. In the "comments" section of the ILO form, Dr. Alexander noted "Category A large opacities [consistent with] complicated [coal workers' pneumoconiosis] in left upper zone; abnormal pleuro-parenchymal scarring in [right]; post-surgical change vs post-infectious; [tuberculosis] is not excluded; needs further evaluation."

Dr. Wolfe read the July 11, 2011 x-ray and indicated that there were small opacities consistent with simple pneumoconiosis, but no large opacities. Employer's Exhibit 6. In the comments section of the ILO form he noted "pleural thickening in the right upper apex possibly fibrotic but consider pulmonary tumor; recommendation is comparison to old films and follow up as warranted." *Id.*

Finally, with respect to the January 31, 2011 x-ray, Dr. Alexander read it as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 13. In the "comments" section of the ILO form, Dr. Alexander noted "post-surgical or past

infectious changes in right apex; 12 x 6 mm large opacity in left upper zone-needs further evaluation." *Id.* Dr. Miller also read the January 31, 2011 x-ray as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 16. Dr. Miller noted abnormalities on the film, and in a narrative report that accompanied the ILO form he wrote: "The appearance of the right apex suggests prior [tuberculosis]. There is a 1 cm left apical nodule that could represent complicated [coal workers' pneumoconiosis] or old [tuberculosis]. *Id.* Dr. Miller summarized his reading as "[c]omplicated pneumoconiosis (A) vs. old [tuberculosis]." *Id.*

In contrast, Dr. Tarver read the January 31, 2011 x-ray and indicated that there were no parenchymal or pleural abnormalities consistent with pneumoconiosis. Director's Exhibit 15. However, on the ILO form, he noted other abnormalities on the film, and wrote "u[pper] lobe granulomas/old [tuberculosis]." *Id.* Moreover, Dr. Meyer read the January 31, 2011 x-ray as showing no parenchymal or pleural abnormalities consistent with pneumoconiosis. Employer's Exhibit 1. He similarly noted other abnormalities on the ILO form, and wrote "? [right] apical opacity? post infectious vs [post] surgical" and "nodularity likely granulomatous [no] [coal workers' pneumoconiosis]." *Id*.

Weighing the x-rays, the administrative law judge initially found that Dr. Alexander's readings of the July 11, 2011 and August 2, 2011 x-rays, as positive for simple and complicated pneumoconiosis, Category A, were "consistent in light of the short period of time between the two x-rays." Decision and Order at 22. Conversely, Dr. Wolfe identified simple pneumoconiosis on the July 11, 2011 x-ray, but no pneumoconiosis on the x-ray taken on August 2, 2011, just three weeks later. Finding Dr. Wolfe's negative x-ray readings to be "inconsistent" the administrative law judge accorded them little weight. *Id.*

The administrative law judge also stated that she would consider Dr. Alexander's readings of Category A large opacities in light of his comments that tuberculosis was not excluded and other diseases needed to be ruled out, stating:

> The evidence in the record shows that Claimant had a negative tuberculosis test, as reported by Dr. Hippensteel. No medical opinion in evidence attributed the cause of Claimant's large masses to tuberculosis, nor do the medical opinions and treatment records show Claimant ever reported that he had tuberculosis. Dr. Alexander's readings are consistent, and are given significant weight. I find that the notations of possible tuberculosis do not render his findings that the opacities are consistent with complicated pneumoconiosis any less persuasive. The medical opinions and treatment records show Claimant had a negative tuberculosis test, and did not report a

> history of the disease. Accordingly, I find the July 11, 2011, and August 2, 2011 x-rays show large opacities, Category A, caused by coal dust exposure.

Decision and Order at 22.

Turning to the January 31, 2011 x-ray, as with the other x-rays, the administrative law judge found the notations by Drs. Miller and Tarver that the lesions seen could be attributable to tuberculosis to be unpersuasive, in light of claimant's negative tuberculosis test. Regarding the comments by Drs. Alexander, Tarver, and Meyer that the lesions could be attributable to another process such as granulomatous disease, the administrative law judge observed that "the x-ray evidence can lose force only if other evidence affirmatively shows that the opacities are not there or are not what they seem to be." Decision and Order at 23, *quoting Scarbro*, 220 F.3d at 256, 22 BLR at 2-100. The administrative law judge noted that, in their medical opinions, Drs. Hippensteel and Castle opined that the x-ray lesions are not due to coal dust exposure but are likely due to tuberculosis, histoplasmosis, a bird-borne fungal disease, or another granulomatous disease. Decision and Order at 23-24. The administrative law judge further noted that the relevant question "is not whether [the physicians] definitely found the changes in claimant's lungs to be due to other diseases, but whether these physicians definitely excluded complicated pneumoconiosis as a diagnosis." Decision and Order at 23, *quoting Looney v. Shady Lane Coal Corp.*, BRB No. 06-0508 BLA (Feb 28, 2007) (unpub.) (*citing Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 1145-46 (4th Cir. 1993)). The administrative law judge discredited both physicians' opinions, finding that they did not explain why it was more likely that claimant's x-ray lesions were caused by tuberculosis or histoplasmosis, and not by his twenty-five years of dust exposure, when claimant tested negative for tuberculosis and had no exposure to birds. Decision and Order at 23-24.

Weighing the x-rays and medical opinions together, the administrative law judge found that the "equivocal and speculative" opinions of Drs. Hippensteel and Castle do not undercut the x-ray evidence, which affirmatively establishes the presence of complicated pneumoconiosis, Category A, arising out of coal dust exposure.[6] Decision and Order at 24, *citing Cox*, 602 F.3d at 283-84, 24 BLR at 2-281-82.

[6] The administrative law judge also considered the results of seven computed tomography (CT) scans read by Drs. Hippensteel and Castle, pursuant to 20 C.F.R. §718.304(c). Decision and Order at 24; Director's Exhibit 17; Employer's Exhibits 4, 5. Having discredited their medical opinions, the administrative law judge similarly found that the physicians' CT scan readings do not demonstrate that the lesions seen on the x-

Employer asserts that the administrative law judge's evaluation of the x-ray and medical opinion evidence relevant to the existence of complicated pneumoconiosis is not supported by substantial evidence and does not meet the requirements of the Administrative Procedure Act (APA).[7] Employer contends that the administrative law judge selectively and improperly evaluated the evidence. We agree.

The administrative law judge failed to properly discuss evidence in the record that may be relevant to whether the lesions seen on claimant's x-rays are opacities of complicated pneumoconiosis. First, the administrative law judge dismissed the comments that the lesions on x-ray could represent old tuberculosis, finding that "claimant had a negative tuberculosis test as reported by Dr. Hippensteel." Decision and Order at 22. But as employer correctly asserts, Dr. Hippensteel did not state that claimant tested negative for tuberculosis; he merely related that *claimant reported to him* that he recently tested negative for the disease.[8] Thus the administrative law judge has mischaracterized Dr. Hippensteel's opinion.

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rays are due to another pathology. *Id.* Finally, the administrative law judge noted that x-rays and CT scans contained in claimant's treatment records indicate the presence of large opacities, although the readings "are speculative as to the etiology." Decision and Order at 25; Claimant's Exhibit 4. The administrative law judge also noted, however, that "the majority of the opinions note coal dust exposure and the likelihood of pneumoconiosis" and that there is no evidence of lung cancer or tuberculosis in the treatment records. Decision and Order at 25. Thus the administrative law judge concluded that the treatment records "support a finding that Claimant's lungs have Category A large opacities, and these opacities are due to coal dust exposure." *Id.*

[7] The Administrative Procedure Act 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 on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[8] Contrary to employer's argument, the fact that the tuberculosis test results are not in the record does not compel the administrative law judge to dismiss claimant's statement that he tested negative. Employer's Brief at 7, 9-10. It is within the purview of the administrative law judge to evaluate the evidence and make credibility determinations, and the Board will not substitute its judgment for that of the administrative law judge. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08, 22 BLR 2-162, 2-168 (4th Cir. 2000); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-587, 2-606 (4th Cir. 1999); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524,

There is also merit to employer's contention that the administrative law judge erred in discrediting the opinions of Drs. Hippensteel and Castle for failing to "explain why tuberculosis and/or histoplasmosis are more likely [than coal dust] to [have] cause[d] [the] opacities, despite a negative tuberculosis test and no exposure to birds." Decision and Order at 24. An administrative law judge may reject, as speculative, the opinions of experts who exclude coal dust exposure as the cause for masses seen on x-ray, and attribute the x-ray findings to other conditions such as granulomatous disease, if they fail to point to evidence in the record indicating that the miner suffers or suffered from any of the alternative diseases. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284. As employer correctly asserts, however, here the administrative law judge failed to adequately consider the evidence relevant to the existence of the alternative diseases.

First, contrary to the administrative law judge's finding, Dr. Hippensteel explained that because tuberculosis is just one type of granulomatous disease, a negative tuberculosis test does not rule out the presence of other types of granulomatous disease, such as sarcoidosis and histoplasmosis. Employer's Exhibits 7 at 24; 17 at 6. Further, while Dr. Hippensteel stated that histoplasmosis, a bird-borne fungal disease, can be contracted by people who raise chickens, he did not say *only* these people can contract it. *See* Decision and Order at 23 (discrediting Dr. Hippensteel for failing to explain "why it was more likely the opacity was caused by histoplasmosis, 'a bird-borne fungal organism' found in people who grew up raising chickens . . . ."). Rather, he stated that histoplasmosis is a common disease endemic in river valleys, that people who live in areas containing many river valleys are susceptible to it, and that it can be contracted even when the exposure is not remembered. Employer's Exhibits 7 at 24-25; 17 at 6.

Dr. Hippensteel also explained why he thought the lesions seen on x-ray were more likely the result of histoplasmosis than coal dust exposure. Dr. Hippensteel stated that histoplasmosis densities can mimic coal workers' pneumoconiosis but are associated with more significant calcification than lesions of coal workers' pneumoconiosis. Employer's Exhibits 7 at 20-22; 17 at 6-7. He added that computed tomography (CT) scans, being more sensitive than x-rays, help the clinician to more easily see and distinguish the characteristics of the calcifications present. Employer's Exhibit 7 at 20-22. Here, Dr. Hippensteel explained, the dense calcifications observed on the CT scans were consistent with healed granulomatous disease, and not with coal workers' pneumoconiosis. Employer's Exhibits 4; 7 at 23. More importantly, Dr. Hippensteel noted that the CT scans also revealed calcifications in claimant's spleen which Dr.

533, 21 BLR 2-323, 2-336 (4th Cir. 1998). On remand, however, the administrative law judge must consider this factor.

Hippensteel stated is a marker for granulomatous disease, and not for coal workers' pneumoconiosis.[9] Employer's Exhibit 7 at 23-24. For these reasons, Dr. Hippensteel concluded that claimant "definitely had conglomerate granulomatous scarring in his lungs" and that the "evidence in this case shows . . . that [claimant] does not have [a chronic lung disease that is related to or aggravated by coal dust exposure]." Employer's Exhibits 17 at 6; 7 at 35-36.

Dr. Castle's opinion echoed Dr. Hippensteel's in many respects. He opined that a negative tuberculosis test does not exclude even a previous tuberculosis infection, and agreed that tuberculosis is just one type of granulomatous disease.[10] Employer's Exhibits 5; 8 at 27-28. Dr. Castle stated that histoplasmosis is another type of granulomatous disease that is endemic to Virginia, West Virginia, Kentucky, and parts of Tennessee. Employer's Exhibit 8 at 16-17. He explained that while histoplasmosis could be contracted in chicken houses and barns, it could also be contracted simply by working in the yard where there are a number of bird droppings, and that most people do not even know they have acquired it. Employer's Exhibits 5 at 46; 8 at 16-17.

Dr. Castle also agreed that CT scans offer "a more sensitive picture of what's going on in the lung" than x-rays, and can aid in explaining abnormalities seen radiographically. Employer's Exhibit 8 at 11, 13. Here, Dr. Castle explained, the CT scans revealed several large areas in the upper lung zones that were "very significantly calcified," which is a typical feature of granulomatous disease. Employer's Exhibit 8 at 13. Dr. Castle stated that these very calcified areas, taken together with the presence of calcified lymph nodes and granulomas in the spleen and liver, also seen on the CT scans, "clearly make [the lung lesions] granulomas rather than large opacities of pneumoconiosis." Employer's Exhibit 8 at 13-14. Dr. Castle further stated that claimant's condition "meets the specific findings that one would expect to see with histoplasmosis" and emphasized that claimant does not have the type of lesion caused or aggravated by coal dust exposure. Employer's Exhibit 8 at 29, 31-32.

Based on the foregoing, we agree with employer that the administrative law judge erred in selectively analyzing the evidence when she concluded that Drs. Hippensteel and Castle failed to explain why tuberculosis and/or histoplasmosis are more likely to have

[9] Dr. Hippensteel explained that because coal dust does not travel to the liver or spleen it does not cause calcified lesions in those areas. Employer's Exhibit 7 at 21.

[10] Dr. Castle explained that a granuloma is simply a scar that has resulted from an infection from an organism, such as tuberculosis or a fungal disease like histoplasmosis, which has calcified over time. Employer's Exhibit 8 at 28.

caused the lesions seen on x-ray than claimant's years of coal dust exposure.[11] Moreover, both physicians pointed to evidence in the record indicating that the miner suffers or suffered from a granulomatous disease which caused calcifications in his spleen. Accordingly, the administrative law judge's assignment of "little weight" to their opinions cannot be affirmed. We therefore vacate the administrative law judge's conclusion that the medical opinions of Drs. Hippensteel and Castle regarding the etiology of the masses identified on CT scan were equivocal, speculative, conclusory, and not well-reasoned. 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).

For the foregoing reasons, we vacate the administrative law judge's determination that the x-ray evidence establishes complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a) and remand this case for further consideration. *See Wojtowicz*, 12 BLR at 1-165; *Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985); Decision and Order at 24. Consequently, we also vacate the administrative law judge's determination that claimant established a change in an applicable condition of entitlement.

On remand, the administrative law judge must reconsider the x-ray evidence at 20 C.F.R. §718.304(a), together with the CT scans, medical opinions, and treatment records at 20 C.F.R. §718.304(c), to determine whether, taken together, the evidence supports a finding of complicated pneumoconiosis. *See Cox*, 602 F.3d at 283, 24 BLR at 2-280-81. The administrative law judge must consider all relevant evidence, and explain her findings. *See Wojtowicz*, 12 BLR at 1-165.

If the administrative law judge again finds that the evidence establishes the existence of complicated pneumoconiosis, claimant will be entitled to invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304, and entitled to benefits.[12] Conversely, if the administrative law judge finds that the

[11] Further, the administrative law judge discredited Dr. Castle's opinion, in part, because she found that he relied on x-ray evidence that greatly exceeds the evidentiary limitations at 20 C.F.R. §725.414, namely, his "review of 105 x-ray interpretations, 91 of which were taken prior to Claimant's last denial of benefits." Decision and Order at 24. The administrative law judge did not consider, however, whether these x-ray readings were submitted in the prior claims, or are contained in treatment records and, therefore, are not subject to the limitations on evidence. *See* 20 C.F.R. §§725.414(a)(4); 725.309(d).

[12] If the administrative law judge finds that the new evidence establishes the existence of complicated pneumoconiosis, claimant will have established a change in an applicable element of entitlement pursuant to 20 C.F.R. §725.309(c).

evidence does not establish the existence of complicated pneumoconiosis, the administrative law judge must determine whether claimant has established the existence of total disability pursuant to 20 C.F.R. §718.204(b). If so, claimant will have invoked the rebuttable presumption of total disability due to pneumoconiosis provided at Section 411(c)(4) of the Act,[13] and the administrative law judge must determine whether employer has rebutted the presumption. If claimant fails to establish total disability pursuant to 20 C.F.R. §718.204(b), he will not be entitled to benefits. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

[13] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's disability was due to pneumoconiosis in cases where claimant establishes that the miner had at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305. Here, we have affirmed the administrative law judge's finding that claimant established 25.09 years of underground coal mine employment.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge