U.S. Department of Labor

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

BRB No. 18-0100 BLA

BILLY WAYNE RICHARDSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
RICH MOUNTAIN COAL COMPANY	)	DATE ISSUED: 01/28/2020
	)	
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 Denial of Claim of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Billy Wayne Richardson, Jellico, Tennessee.

James M. Kennedy (Baird and Baird, P.S.C.), Pikesville, Kentucky, for employer.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denial of Benefits (2016-BLA-05231) of Administrative Law Judge Daniel F. Solomon, rendered

under the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] This case involves a miner's subsequent claim filed on September 19, 2014.[2]

[1] In a letter sent to claimant by electronic mail on July 25, 2019, the Board informed him that a recent United States Supreme Court decision, *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018), may apply to his case. The Board explained that it would consider whether *Lucia* applies only if claimant asked the Board to do so and instructed him that he must return his response by August 5, 2019. Claimant asked for *Lucia* review by letter post-marked August 12, 2019 and received on August 19, 2019. The Board then issued an order serving claimant's answer on employer and the Director, Office of Workers' Compensation Programs (the Director), allowing them ten (10) days from receipt of the order to submit a response. The Director responded and urged the Board to deny claimant's request for *Lucia* review based on his unexplained failure to meet the August 5, 2019 deadline. Director's Response at 3.

In an Order to Show Cause sent to claimant by electronic mail on November 13, 2019 the Board provided him an opportunity to explain why he did not return his answer to the *Lucia* letter by the deadline, allowing him ten (10) days from the receipt of the order to respond. The Board informed claimant that if it did not receive a satisfactory explanation within the required time period, claimant's request for *Lucia* review would be considered untimely and the Board would proceed with consideration of claimant's appeal of the Decision and Order. Claimant did not respond. Accordingly, we now address claimant's appeal.

[2] Claimant filed three prior claims for benefits. Director's Exhibits 1-3. The district director granted claimant's requests to withdraw his second and third claims, filed on November 15, 2007 and April 22, 2013, respectively, after the district director preliminarily determined claimant did not establish total disability or total disability causation. Director's Exhibits 2, 3. These claims are treated as if they were never filed. 20 C.F.R. §725.306(b). Claimant's initial claim, filed on July 12, 1996, was denied by the district director in a Proposed Decision and Order issued on October 28, 1996, for failure to establish any element of entitlement. Director's Exhibit 1. 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 "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). Because claimant withdrew his second and third claims, the applicable conditions of entitlement are determined by reference to the denial of claimant's initial claim. 20 C.F.R. §725.306(b).

The administrative law judge found claimant had more than ten but less than fifteen years of coal mine employment and therefore did not invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4) (2012).[3] He determined the new evidence did not establish clinical or legal pneumoconiosis or a totally disabling respiratory or pulmonary impairment, and denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the administrative law judge's Decision and Order 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).

I. Invocation of the Section 411(c)(4) Presumption

A. Length of Coal Mine Employment

Claimant bears the burden of proof to establish the length of his coal mine employment. *See Mills v. Director, OWCP*, 348 F.3d 133, 136 (6th Cir. 2003); *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985). The Board will uphold an administrative

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As that initial claim was denied for failure to establish any element of entitlement, claimant had to demonstrate at least one element of entitlement to obtain review of his subsequent claim on the merits. *White*, 23 BLR at 1-3.

[3] Section 411(c)(4) provides a rebuttable presumption that claimant is totally disabled due to pneumoconiosis if he establishes 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), as implemented by 20 C.F.R. §718.305.

[4] Because claimant's last coal mine employment was in Tennessee, 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, 1-202 (1989) (en banc); Director's Exhibit 1 at 210-211, 217.

law judge's determination if it is based on a reasonable method and supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The administrative law judge acknowledged claimant's allegations of between seventeen and twenty years of coal mine employment, and the district director's finding of thirteen years.[5] Decision and Order at 4; Director's Exhibits 5, 8, 13; Hearing Transcript at 14. He determined, "[c]laimant failed to provide any explanation for the discrepancy between his alleged [twenty] years of coal mine employment" and the district director's finding of thirteen years. *Id.* at 5. He therefore concluded, "I accept that the [c]laimant worked more than ten years of coal mine employment but not as many as fifteen years." *Id.*

Because the administrative law judge's analysis does not accord with the regulations requiring him to consider the evidence and render his own findings, we cannot affirm his determination of less than fifteen years of coal mine employment. Pursuant to 20 C.F.R. §725.455(a), "any findings or determinations made with respect to a claim by a district director shall not be considered by the administrative law judge." Therefore, when a party requests a formal hearing after a district director's proposed decision, an administrative law judge must proceed *de novo* and independently weigh the evidence to reach his or her own findings on each issue of fact and law. *See Dingess v. Director, OWCP*, 12 BLR 1-141, 1-143 (1989); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-863 (1985). By omitting a substantive consideration of the evidence, the administrative law judge gave presumptive effect to the district director's finding of thirteen years of coal mine employment, thereby failing to proceed *de novo*.

Accordingly, we vacate the administrative law judge's finding that claimant did not establish the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption and remand the case for reconsideration of this issue. On remand, he must consider all relevant evidence *de novo* and render a finding as to the length of claimant's coal mine employment.[6] He must identify the employers for whom claimant

[5] In the Schedule for the Submission of Additional Evidence and Proposed Decision and Order awarding benefits in this claim, the district director cited claimant's Social Security Administration earnings records in support of the determination of thirteen years of coal mine employment. Director's Exhibit 31. The district director did not set forth the method of computation used in either document.

[6] Because claimant's withdrawn claims are considered never to have been filed, the evidence submitted with them is not part of the record in this subsequent claim. 20 C.F.R. §725.306(b). In contrast, the evidence from claimant's 1996 claim is part of the record and

performed the work of a coal miner,[7] use a reasonable method of calculation to determine the length of such employment, and fully explain his findings in accordance with the Administrative Procedure Act (APA).[8] *See Shepherd v. Incoal, Inc.*, 915 F.3d 392, 407 (6th Cir. 2019); *Aberry Coal, Inc. v. Fleming*, 843 F.3d 219, 224 (6th Cir. 2016), *amended on reh'g*, 847 F.3d 310, 315-16 (6th Cir. 2017); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

If the administrative law judge credits claimant with at least fifteen years of coal mine employment on remand, he must determine whether this coal mine employment, which was entirely aboveground, occurred in conditions substantially similar to those in an underground mine. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(i), (b)(2) ("[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there."). If claimant does not satisfy his burden to establish fifteen years of substantially similar surface coal mine employment, he cannot invoke the Section 411(c)(4) presumption. *Id.*

B. Total Disability

Claimant is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable

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contains evidence relevant to the length of claimant's coal mine employment. 20 C.F.R. §725.309(c)(2); Director's Exhibit 1.

[7] Under the Act, a "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal." 30 U.S.C. §902(d); *see* 20 C.F.R. §§725.101(a)(19), 725.202(a). The United States Court of Appeals for the Sixth Circuit has adopted a situs-function test in determining whether an individual is a "miner" under the Act. *Director, OWCP v. Consolidation Coal Co.*, [*Petracca*], 884 F.2d 926, 931, 13 BLR 2-38, 2-41-42 (6th Cir. 1989). The situs portion of the test requires that a person's work occur in or around a coal mine or coal preparation facility. *Id.* An individual meets the function requirement if his work was necessary and integral to the extraction or preparation of coal. *Id.*

[8] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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).

gainful work. *See* 20 C.F.R. §718.204(b)(1). He may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all relevant evidence and weigh the evidence supporting total disability against the contrary probative evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The administrative law judge determined claimant failed to establish total disability under 20 C.F.R. §718.204(b)(2)(i), (iii), (iv),[9] and on a weighing of the evidence as a whole. Decision and Order at 8-10.

The administrative law judge addressed the new pulmonary function study evidence when determining whether claimant established legal pneumoconiosis[10] at 20 C.F.R. §718.202(a)(4). Decision and Order at 8. He summarized Dr. Mansour's report of his examination of claimant on October 3, 2014, noting the physician diagnosed a severe obstructive impairment due in significant part to coal dust exposure, based on the results of the pulmonary function study he administered. *Id.*; Director's Exhibit 13. The administrative law judge indicated that in response, employer submitted the opinion of Dr. Vuskovich, who reviewed Dr. Mansour's pulmonary function study. Decision and Order at 8-9; Director's Exhibit 16. The administrative law judge then set forth the pO2 and pCO2 values from the blood gas studies Dr. Mansour performed on October 3, 2014, noting a Department of Labor physician validated the tests. Decision and Order at 9; Director's Exhibit 13. He next addressed Dr. Vuskovich's invalidation of the October 3, 2014 pulmonary function study due to poor effort, and his diagnosis of a mild obstructive

[9] The administrative law judge correctly determined claimant is not entitled to the irrebuttable presumption of total disability due to pneumoconiosis, as the record is devoid of evidence of complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 10. He also correctly found claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iii) because there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 10. We affirm these findings as supported by substantial evidence. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 307 (6th Cir. 2005).

[10] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

impairment based on a recalculation of the values from this study. Decision and Order at 9; Director's Exhibit 16; Employer's Exhibit 2. The administrative law judge found:

> Although Dr. Mansour accurately explained the mechanics of legal pneumoconiosis, her report is undermined by the assumption that the [c]laimant exhibited moderately severe spirometry, when equally probative evidence establishes that it was merely mild. I do not credit Dr. Vuskovich's opinions [with] controlling weight but find that as [c]laimant bears the burden of proof, he cannot establish the accuracy of testing in this record.
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> …
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> Since the testing is at equipoise, I find that Dr. Mansour's opinion is not well reasoned because . . . as to legal pneumoconiosis she falsely assumed that the [Office of Workers' Compensation Programs] testing was valid, when in fact it was in equipoise.

Decision and Order at 9. The administrative law judge concluded, therefore, claimant did not establish legal pneumoconiosis. *Id*. When he turned to the issue of total disability under 20 C.F.R. §718.204(b)(2)(i), he summarily found that both the pulmonary function study evidence and blood gas study evidence did not establish total disability based on his determination at 20 C.F.R. §718.202(a)(4) that "the pulmonary function studies are at equipoise as to quality." *Id*. at 10.

We cannot affirm the administrative law judge's finding that the pulmonary function study evidence does not establish total disability. When determining the validity of the new pulmonary function studies, he did not consider that in contrast to Dr. Vuskovich, Dr. Mansour reported claimant's comprehension and cooperation on the October 3, 2014 pulmonary function study as "good," and diagnosed a totally disabling obstructive impairment based on the study. Director's Exhibit 13. He also did not explicitly weigh the validation of the study by Dr. Gaziano.[11] Decision and Order at 9; Director's Exhibit 13. He further neglected to address Dr. Jarboe's review of the October 3, 2014 pulmonary

[11] As previously indicated, the extent of the administrative law judge's consideration of Dr. Gaziano's report consists of his statement, after listing the results of the October 3, 2014 blood gas studies, that "[t]he quality of these tests was deemed valid by a Department of Labor examiner." Decision and Order at 9. Because the section of the form pertaining to the validity of the blood gas studies is crossed through, however, the administrative law judge presumably referred to Dr. Gaziano's validation of the October 3, 2014 pulmonary function study. Director's Exhibit 13.

function study, wherein the physician stated: "[I]t appears the claimant gave reasonably good effort and cooperation. It appears the spirogram was valid." Director's Exhibit 17. Furthermore, rather than setting out the results of the October 3, 2014 pulmonary function study, he substituted the results of the resting and exercise blood gas studies Dr. Mansour performed on the same date. Decision and Order at 9; Director's Exhibit 13. The administrative law judge also failed to determine whether the results of the new pulmonary function tests conducted by Drs. Mansour and Jarboe are qualifying. Finally, he ignored the pulmonary function study Dr. Jarboe administered on April 16, 2015.[12] *Id*.

Because the administrative law judge omitted consideration of relevant evidence, presented an inaccurate summary of the results of Dr. Mansour's pulmonary function study, and did not make necessary findings, we must vacate his determination that the new pulmonary function study evidence did not establish total disability. *See* 30 U.S.C. §923(b); *Director, OWCP, v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). Accordingly, we remand this case to the administrative law judge for reconsideration of the new pulmonary function study evidence. On remand, the administrative law judge must address the pulmonary function studies dated October 3, 2014 and April 16, 2015, determine whether they are qualifying, determine whether they are valid based on a consideration of all relevant opinions, and render a finding as to whether they establish total disability under 20 C.F.R. §718.204(b)(2)(i).

Relevant to 20 C.F.R. §718.204(b)(ii), the administrative law judge did not consider whether claimant established total disability based on the blood gas study evidence. His statement that the blood gas studies do not establish total disability because "the pulmonary function studies are at equipoise as to quality" is not rational. These tests measure different types of impairment and the validity of one category of test is not determinative of the validity or qualifying nature of the other. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797,

[12] Dr. Jarboe declared the April 16, 2015 pulmonary function study invalid "as the claimant gave very inconsistent effort." Director's Exhibit 17. He also stated that this test "cannot be used to assess severity of impairment or the type of impairment present." *Id*. However, he further observed that the best FEV1 on the April 16, 2015 study was significantly better than the FEV1 on Dr. Mansour's October 3, 2014 study and "a patient cannot produce a falsely high FEV1." *Id*. After considering Dr. Mansour's pulmonary function study and the pulmonary function study he conducted, Dr. Jarboe ultimately concluded claimant is totally disabled from a pulmonary standpoint. *Id*.

798 (1984). Accordingly, the administrative law judge must reconsider the new blood gas studies on remand and render a finding as to whether they establish total disability.

Under 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the new medical opinions of Drs. Mansour, Jarboe and Vuskovich.[13] Decision and Order at 11; Director's Exhibits 13, 15-17; Employer's Exhibit 2. He initially summarized Dr. Mansour's diagnosis of a totally disabling obstructive impairment and determined claimant's usual coal mine job was that of a truck driver.[14] Decision and Order at 12. Relying on the *Dictionary of Occupational Titles*, the administrative law judge found the job of truck driver required medium exertion, and discredited all three medical opinions because the physicians did not "address the work that [c]laimant performed." *Id*. He therefore concluded total disability was not established by the new medical opinion evidence. *Id*.

We cannot affirm the administrative law judge's finding. By beginning his analysis with a summary of Dr. Mansour's opinion, it is unclear whether the administrative law judge based his consideration of the medical opinion evidence, in part, on his prior findings

[13] Dr. Mansour reported claimant last worked as a truck driver, drill operator and high-lift operator. Director's Exhibit 45. He diagnosed a severe obstructive impairment based on the results of the October 3, 2014 pulmonary function study and stated, "the severity of the impairment prevents [claimant] from performing his last coal mine job." *Id*. In a supplemental report, he acknowledged that some of the values from claimant's pulmonary function study exceeded Department of Labor disability standards and stated, "I feel all test results, combined together, in my professional opinion would prevent him performing his last coal mine work." Director's Exhibit 14. Dr. Jarboe noted claimant's last job was operating a drill, and diagnosed a moderately severe obstructive impairment based on Dr. Mansour's pulmonary function study. He reported moderately severe hypoxemia not qualifying under federal guidelines based on the blood gas study he performed. Director's Exhibit 53. He opined claimant "is totally disabled from a pulmonary standpoint. He no longer retains the functional pulmonary capacity to perform his last coal mining job or one of similar physical demand in a dust-free environment." *Id*. Dr. Vuskovich diagnosed a mild obstructive impairment based on his recalculation of the values from the October 3, 2014 pulmonary function study, which he invalidated. Employer's Exhibit 2. He stated claimant has the ventilatory capacity to perform his last coal mine job as a driller. Employer's Exhibit 2.

[14] Claimant testified at the hearing he last worked as a back dump driver and could no longer perform this job because he "couldn't stand the beating of it." Hearing Transcript at 18, 21.

regarding the validity of Dr. Mansour's October 3, 2014 pulmonary function study, and the degree of impairment shown, which we have vacated.[15] In addition, the administrative law judge did not consider whether he could reasonably compare the diagnoses of a moderately severe to severe obstructive impairment made by Drs. Jarboe and Mansour, respectively, to his determination claimant's job as a truck driver required medium exertion. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000).

We therefore vacate the administrative law judge's finding claimant did not establish total disability by the new medical opinion evidence. On remand, he must reconsider the new medical opinion evidence and determine whether it is sufficient to establish total disability. In weighing the new opinions of Drs. Mansour, Jarboe and Vuskovich, the administrative law judge must resolve material conflicts and consider the physicians' respective qualifications, the explanations for their conclusions, and the documentation underlying their medical judgments. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522 (6th Cir. 2002). Finally, because we have vacated the administrative law judge's findings at 20 C.F.R. §718.204(b)(2)(i), (ii), (iv), we also vacate his determination claimant did not establish total disability or a change in an applicable condition of entitlement by a preponderance of the new evidence, considered as a whole. After reconsidering the evidence relevant to 20 C.F.R. §718.204(b)(2)(i), (ii), (iv), therefore, the administrative law judge is required to weigh the evidence supportive of a finding of total disability against the contrary probative evidence to reach a conclusive determination as to whether claimant has satisfied his burden to establish total respiratory or pulmonary disability.

II. Existence of Pneumoconiosis

Because the administrative law judge determined claimant could not invoke the Section 411(c)(4) presumption, he made findings as to the existence of clinical and legal pneumoconiosis with the burden of proof on claimant. Accordingly, we review his findings in that context. If claimant invokes the Section 411(c)(4) presumption on remand,

[15] Additionally, immediately prior to summarizing Dr. Mansour's opinion on total disability, the administrative law judge referenced his earlier finding that Dr. Mansour's opinion is not well-reasoned on the issue of pneumoconiosis. Decision and Order at 11. As noted below, that credibility finding with respect to legal pneumoconiosis was based in part on an inadequately considered determination that the pulmonary function testing on which Dr. Mansour relied is invalid.

however, the burden shifts to employer to establish claimant has neither legal nor clinical pneumoconiosis.[16]

A. Clinical Pneumoconiosis

Relevant to 20 C.F.R. §718.202(a)(1), the new x-ray evidence consists of two readings of an x-ray dated October 3, 2014, and one reading of an x-ray dated April 16, 2015. Director's Exhibits 13, 17; Employer's Exhibit 1. Dr. DePonte, a dually-qualified Board-certified radiologist and B reader, interpreted the October 3, 2014 x-ray as positive for pneumoconiosis. Director's Exhibit 13. Dr. Seaman, also a dually-qualified reader, interpreted the same x-ray as negative for pneumoconiosis. Director's Exhibit 15. Dr. Seaman was the only physician to read the April 16, 2015 x-ray, and she interpreted it as negative for pneumoconiosis. Employer's Exhibit 1.

The administrative law judge summarized the new x-ray evidence and stated: "All of the experts are equally qualified, but two Employer/Carrier experts find no pneumoconiosis and only Dr. DePonte finds pneumoconiosis. She apparently was not asked to review the April, 2015 x-ray, which is read as negative." Decision and Order at 7. Without rendering an explicit finding as to whether the x-ray evidence established clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), he then considered the new medical opinions relevant to 20 C.F.R. §718.202(a)(4), noting Dr. Mansour is the only physician who diagnosed clinical pneumoconiosis. *Id*. at 9. The administrative law judge determined Dr. Mansour's opinion is not well-reasoned because he "relied on a false assumption that the x-rays were positive."[17] *Id*.

When read together, the administrative law judge's statements on the x-ray evidence and Dr. Mansour's opinion allow for an inference he determined the x-ray evidence did not establish clinical pneumoconiosis. As noted previously, however, the APA requires the administrative law judge to render findings on all material issues of fact and law, and to include the underlying rationale. *See Wojtowicz*, 12 BLR at 1-165. Because he did not

[16] If employer cannot rebut pneumoconiosis, it must establish "no part of [claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii).

[17] Dr. Jarboe opined claimant does not have clinical pneumoconiosis based on his own negative reading of the x-ray dated April 16, 2015. Director's Exhibit 17. Dr. Vuskovich reviewed the results of the examinations of claimant performed by Drs. Mansour and Jarboe, and noted the positive reading of the October 3, 2014 x-ray by Dr. DePonte and the negative reading of the April 16, 2015 x-ray by Dr. Jarboe. Employer's Exhibit 2.

satisfy these requirements when considering the x-ray evidence at 20 C.F.R. §718.202(a)(1), we must instruct him to do so on remand if he again determines claimant cannot invoke the Section 411(c)(4) presumption. If he finds the x-ray evidence establishes clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), he must reconsider Dr. Mansour's opinion on clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4). He is further required to weigh the evidence as a whole to determine if it establishes the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881 (6th Cir. 2012).

B. Legal Pneumoconiosis

To establish legal pneumoconiosis, claimant must prove that he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b). The administrative law judge considered the medical opinions of Drs. Mansour, Jarboe and Vuskovich. Decision and Order at 8-9. Dr. Mansour diagnosed legal pneumoconiosis in the form of a disabling obstructive impairment caused by coal dust exposure and cigarette smoking. Director's Exhibit 13. Dr. Jarboe attributed claimant's disabling obstructive impairment to cigarette smoking and asthma, "not the inhalation of coal mine dust." Director's Exhibit 17. Dr. Vuskovich diagnosed a mild obstructive impairment consistent with asthma and stated claimant does not have a "disabling impairment arising in whole or in part" from coal dust exposure. Director's Exhibit 16; Employer's Exhibit 2. The administrative law judge discredited Dr. Mansour's opinion because his diagnosis of a disabling pulmonary impairment is in equipoise with Dr. Vuskovich's diagnosis of a mild impairment and "she falsely assumed that the OWCP testing was valid, when in fact it was in equipoise." Decision and Order at 8-9. The administrative law judge found Dr. Jarboe's opinion flawed "if he relied on the Attfield and Hodous study" he cited, as it has been "refuted by a subsequent study." *Id*. at 8. The administrative law judge concluded claimant failed to establish legal pneumoconiosis. *Id*. at 9.

We must vacate the administrative law judge's finding. When discrediting Dr. Mansour's opinion, he relied on his determination that the opinions of Drs. Mansour and Vuskovich are in equipoise as to the validity of the October 3, 2014 pulmonary function study and the extent of the impairment it demonstrates, findings we have vacated. In addition, the administrative law judge conflated legal pneumoconiosis and total disability by erroneously reading into the definition of legal pneumoconiosis a requirement that the impairment caused by coal dust exposure be totally disabling. *See* 20 C.F.R. §718.201(a)(2), (b). He also omitted any consideration of a key issue – whether the new medical opinions established claimant's impairment is significantly related to, or substantially aggravated by, dust exposure in coal mine employment. *Id*. Finally, he made a conditional rather than definitive finding by stating Dr. Jarboe's opinion would be flawed

"if" the physician relied on the Attfield and Hodous study. Decision and Order at 8. This does not accord with the APA. *See Wojtowicz*, 12 BLR at 1-165.

On remand, if the administrative law judge again determines claimant cannot invoke the Section 411(c)(4) presumption, he must address whether claimant has met his burden of proof on legal pneumoconiosis, taking into account the physicians' respective qualifications, the explanations for their conclusions, and the documentation underlying their medical judgments. *See Napier*, 301 F.3d at 713-714; *Stephens*, 298 F.3d at 522.

In summary, we have vacated the administrative law judge's findings claimant did not establish the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption, total respiratory or pulmonary disability, the existence of pneumoconiosis, or a change in an applicable condition of entitlement. On remand, the administrative law judge must reconsider these issues in light of all relevant evidence and render his findings in detail, including the underlying rationale, as required by the APA.

Accordingly, the administrative law judge's Decision and Order – Denial of Claim is affirmed in part, vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge