BRB No. 11-0698 BLA

HERMAN PECK	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PREMIUM ENERGY INCORPORATED	)	DATE ISSUED: 07/31/2012
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Second Decision and Order on Remand Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Ashley M. Harman and Jeffrey R. Soukup (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Second Decision and Order on Remand Awarding Benefits (2007-BLA-5079) of Administrative Law Judge Linda S. Chapman, rendered on a claim filed on December 15, 2005, pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). This case is before the Board for a third

time.[1] The Board previously vacated the administrative law judge's award of benefits and her specific finding that claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304(a), (c).[2] *Peck v. Premium Energy, Inc.*, BRB No. 09-0761 BLA, slip op. at 6-7 (Aug. 11, 2010) (unpub.). The Board held that the administrative law judge erred in finding the opinions of Drs. Wheeler, Scott and Scatarige to be speculative and equivocal as to the presence of complicated pneumoconiosis and that she improperly shifted the burden of proof to employer to disprove the existence of complicated pneumoconiosis. *Id*. at 6. The Board further held that the administrative law judge erred in her consideration of the medical opinions of Drs. Rasmussen, Repsher and Spagnolo. *Id*. at 7-8. The administrative law judge was instructed on remand to weigh all of the relevant evidence together at 20 C.F.R. §718.304, prior to finding that claimant satisfied his burden to establish the existence of complicated pneumoconiosis. *Id*. at 8-9. Additionally, the Board instructed the administrative law judge to consider claimant's entitlement pursuant to amended Section 411(c)(4),[3] and to reopen the record, as necessary, for the submission of additional evidence by the parties in response to the recent changes in the law. *Id*. at 8-10.

On remand, the administrative law judge admitted additional evidence submitted by employer into the record and also gave the parties the opportunity to file briefs. On June 9, 2011, she issued her Second Decision and Order on Remand Awarding Benefits, which is the subject of this appeal. The administrative law judge found that claimant failed to establish both the requisite years of coal mine employment and a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2), necessary to invoke the rebuttable presumption of total disability due to pneumoconiosis at amended Section 411(c)(4). The administrative law judge found, however, that claimant established the

[1] The procedural history of this claim is set forth in the Board's prior decisions and is incorporated herein. *Peck v. Premium Energy, Inc.*, BRB No. 09-0761 BLA, slip op. at 2-3 (Aug. 11, 2010) (unpub.).; *H.P.* [*Peck*] *v. Premium Energy, Inc.*, BRB No. 07-0787 BLA, slip op. at 2 (Dec. 18, 2008) (unpub.).

[2] There is no biopsy evidence for consideration at 20 C.F.R. §718.304(b).

[3] Congress enacted amendments to the Act, which apply to claims filed after January 1, 2005 that were pending on or after March 23, 2010. Relevant to this case, Section 1556 of Public Law No. 111-148 reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)).

existence of complicated pneumoconiosis, based on her consideration of all of the evidence together at 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer asserts that the administrative law judge did not follow the Board's remand instructions and erred in finding that claimant satisfied his burden to establish the existence of complicated pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response, unless specifically 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 supported by substantial evidence, is rational, and is 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).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304 of the regulations, provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

The introduction of legally sufficient evidence of complicated pneumoconiosis does not, however, automatically invoke the irrebuttable presumption found at 20 C.F.R. §718.304. The administrative law judge must examine all the evidence on this issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve any conflicts, and make a finding of fact. *See Director, OWCP v. Eastern Coal Corp.* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc); *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979).

On remand, the administrative law judge outlined the Board's instructions and incorporated the medical summary set forth in her August 8, 2007 Decision and Order

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

Awarding Benefits. Decision and Order on Second Remand at 3. The administrative law judge noted that claimant's treatment records included multiple non-ILO classified x-ray readings of masses consistent with complicated pneumoconiosis. *Id*. at 5-6. The administrative law judge considered seven ILO interpretations of two x-rays, dated March 9, 2006 and December 21, 2006, obtained in conjunction with claimant's federal black lung claim. *Id*. at 6-7. The March 9, 2006 x-ray was read as positive for simple and complicated pneumoconiosis, Category A, by Dr. Rasmussen, a B reader, and by Dr. Alexander, dually qualified as a Board-certified radiologist and B reader. Director's Exhibits 11, 13. Drs. Wheeler, Scott and Scatarige, also dually qualified radiologists, read the same film as negative for simple and complicated pneumoconiosis. Employer's Exhibits 1, 2. Dr. Wheeler wrote in the "Comments" section of the ILO form that there was an "irregular 5x4 [centimeter] mass" in the lateral right upper lung "compatible with conglomerate granulomatous disease, histoplasmosis or [tuberculosis]" and a "2-3 [centimeter] mass" in the lower left apex also "compatible with conglomerate granulomatous disease." Claimant's Exhibit 1. Dr. Scott noted "infiltrates and/or fibrosis" in the upper lungs, and calcified granulomata, and opined that the changes "are probably due to [tuberculosis], unknown activity. . . ." Employer's Exhibit 2. Dr. Scatarige identified a five centimeter mass in the right upper lung and multiple calcified nodules in the left upper lung due to "healed or healing" tuberculosis. *Id*.

The December 21, 2006 x-ray was read by Dr. DePonte, a dually qualified radiologist, as positive for simple and complicated pneumoconiosis, Category B, while Dr. Wheeler read this x-ray as negative for simple and complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 7. Dr. Wheeler identified masses that were "compatible" with histoplasmosis or tuberculosis. Employer's Exhibit 7.

The administrative law judge also found that the record included numerous CT scan readings. Decision and Order on Second Remand at 5-6. An April 20, 2001 CT scan was read by Dr. Siner as "suggestive of pneumonia or progressive massive fibrosis." Claimant's Exhibit 6. Dr. Lepsh read an August 15, 2002 CT scan as showing conglomerate masses consistent with silicosis. Claimant's Exhibit 5. A February 7, 2003 CT scan was read by Dr. Pugh, who stated that "[s]ilicosis is the favored etiology. Sarcoidosis and other pneumoconiosis are also diagnostic considerations." *Id*. Dr. Wheeler read the February 7, 2003 CT scan and identified masses, which he determined were compatible with conglomerate granulomatous disease, more likely tuberculosis than histoplasmosis, and stated, "[n]o symmetrical small nodular infiltrates in mid and upper lungs which could indicate [coal workers' pneumoconiosis]." Employer's Exhibit 8. A March 23, 2006 CT scan was read by Dr. McMurray, who reported small opacities consistent with coal workers' pneumoconiosis, and areas he believed to be consistent with progressive massive fibrosis: 5 centimeters by 3.1 centimeters in the upper lobe, 5.8 centimeters by 4.3 centimeters in the right mid-lobe and a density in the left lobe measuring 3.9 centimeters. Claimant's Exhibit 6. Dr. Wheeler, however, read the March

23, 2006 CT scan and opined that it showed advanced calcified granulomatous disease, "most likely histoplasmosis," but not pneumoconiosis. Employer's Exhibit 8.

In analyzing whether claimant established the existence of complicated pneumoconiosis, the administrative law judge first stated:

> The evidence in [this] claim, when considered in isolation under independent subsections at 20 C.F.R. §718.304(a) and (c), is not sufficient to establish *the presence or absence* of complicated pneumoconiosis. Thus, the ILO x-ray interpretations included seven readings of two x-rays with readings that are in equipoise for simple and complicated pneumoconiosis. Although there are numerous narrative x-ray readings in the record with findings of large masses, none of the interpreting physicians unequivocally stated that the masses constituted category A B or C opacities of pneumoconiosis. The record also includes numerous CT scan interpretations reporting the presence of large masses in [claimant's] lungs, but none of the radiologists indicated that these masses would appear on x-ray as [C]ategory A or B opacities.

Decision and Order on Second Remand at 4 (emphasis added). However, the administrative law judge also noted that, in accordance with the guidelines set forth by the United States Court of Appeals for the Fourth Circuit in *Scarbro* and *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 24 BLR 2-269 (4th Cir. 2010), she was required to consider whether the evidence, as a whole, indicates a condition of such severity that it would produce opacities greater than one centimeter in diameter on an x-ray, and whether these opacities are due to pneumoconiosis. Second Decision and Order on Remand at 3, 7. The administrative law judge found that the x-ray and CT scan evidence "overwhelmingly establishes that claimant has large masses in his lungs" and further noted that "there does not seem to be a disagreement on this issue." *Id*. at 5. Therefore, she focused her analysis on the etiology of the masses or large opacities identified on x-rays and CT scans.

In weighing the conflicting x-ray readings, the administrative law judge discussed the qualifications of Drs. Rasmussen, Alexander and DePonte and found that they provided credible x-ray readings of complicated pneumoconiosis, Category A or B opacities. Decision and Order on Second Remand at 8, 12-13. The administrative law judge also found that, while Drs. Wheeler, Scott, and Scatarige have excellent credentials, their opinions, that claimant's opacities or masses, exceeding one centimeter in diameter, were due to conditions such as tuberculosis, histoplasmosis, granulomatous disease or sarcoidosis disease, were speculative and entitled to little weight. *Id*. at 9, 12. Thus, the administrative law judge assigned controlling weight to the positive x-ray readings for complicated pneumoconiosis by Drs. Rasmussen, Alexander and DePonte.

Id. at 12. The administrative law judge also credited Dr. Rasmussen's opinion, that claimant has complicated pneumoconiosis, over the contrary opinions of Drs. Spagnolo[5] and Repsher[6]. *Id*. at 13-14. The administrative law judge concluded that claimant satisfied "his burden to establish that he has a disease process in his lungs that appears as category A or B opacities on x-ray, and that these opacities are due to pneumoconiosis." *Id*. at 15.

Employer contends that the administrative law judge did not follow the Board's instructions to apply the burden of proof to claimant to establish complicated pneumoconiosis, and that she presumed that the large masses seen on claimant's x-rays and CT scans were due to pneumoconiosis. Employer's Brief in Support of Petition for Review at 12-14. We disagree. The administrative law judge permissibly credited the x-ray interpretations of Drs. Rasmussen, Alexander and DePonte, who specifically attributed the masses to pneumoconiosis, finding that their readings were supported by claimant's treatment record and CT scans.[7] *See Milburn Colliery Co. v. Hicks*, 138 F.3d

[5] Dr. Spagnolo reviewed claimant's medical records and, in a report dated January 27, 2007, opined that claimant did not have a pulmonary or respiratory impairment aggravated by the inhalation of coal mine dust. Employer's Exhibit 3. He stated that claimant retained the respiratory capacity to perform his last coal mine employment. *Id*. In addition, he noted that the record contained numerous chest x-rays, with some physicians diagnosing pneumoconiosis and some physicians diagnosing granulomatous disease. *Id*. He concluded that claimant did not have complicated pneumoconiosis, citing Dr. Wheeler's negative readings and noting Dr. Wheeler's qualifications. *Id*.

[6] Dr. Repsher reviewed claimant's medical records and, in a report dated February 7, 2007, stated that claimant did not have any radiographic evidence of coal workers' pneumoconiosis, but did have x-ray evidence consistent with tuberculosis or sarcoidosis. Employer's Exhibit 5. He opined that claimant has "no clinically significant pulmonary impairment." *Id*.

[7] There is no merit to employer's argument that "Drs. Alexander and DePonte never expressly attributed the opacities to pneumoconiosis (or to any chronic dust disease of the lung)." Employer's Brief in Support of Petition for Review at 30-31. The ILO classification form requires the physician interpreting the x-ray film to first determine whether there are "[a]ny [p]arenchymal [a]bnormalities [c]onsistent with [p]neumoconiosis." *See* Form CM-933, question 2A. If the physician answers in the affirmative, then he/she proceeds to the sections regarding the size of the opacities, *i.e.*, small opacities or large opacities of size A, B, or C. *See* Form CM-933, question 2B and 2C. In this case, Drs. Rasmussen, Alexander and DePonte each found parenchymal abnormalities, Category A, B, or C opacities, consistent with pneumoconiosis. Director's Exhibits 11, 13; Claimant's Exhibit 1.

524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); Second Decision and Order on Remand at 12-13. The administrative law judge permissibly found that "[w]hile some of the x-ray and CT scan interpretations suggest other diagnostic possibilities . . . the *preponderance*[8] of those interpretations support the conclusion that the abnormalities in [claimant's] lungs are due to pneumoconiosis." Second Decision and Order on Remand at 13 n.4; *see Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-274.

We also reject employer's argument that the administrative law judge erred in discounting the opinions of Drs. Scatarige, Scott and Wheeler as speculative and equivocal. Employer's Brief in Support of Petition for Review at 14-17. Subsequent to the Board's remand decision, the Fourth Circuit held in *Cox*, under factual circumstances similar to this case, that an administrative law judge may reject, as speculative and equivocal, the opinions of employer's experts, who exclude coal dust exposure as the cause for large opacities or masses identified by x-ray, and attribute the radiological findings to conditions such as tuberculosis, histoplasmosis or 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. In resolving the conflict in the evidence, the administrative law judge correctly noted that the "record includes no indication that [claimant's] physicians have diagnosed or treated him for tuberculosis or granulomatous disease." Second Decision and Order on Remand at 8. Therefore, the administrative law judge permissibly gave less weight to the negative x-ray readings of Drs. Scatarige, Scott and Wheeler, and the negative CT scan interpretations of Dr. Wheeler, noting that these physicians "speculated about the cause of the abnormalities seen on the films, and they attributed them to tuberculosis or granulomatous disease, *despite the lack of any medical evidence in the record* to support such a conclusion." *Id*. at 12 (emphasis added); *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.

We further hold that there is no merit in employer's argument that the administrative law judge did not give proper consideration to Dr. Wheeler's opinion, as instructed by the Board. Employer's Brief in Support of Petition for Review at 20-23. The administrative law judge was directed by the Board to consider Dr. Wheeler's explanation that coal dust exposure was not a causative factor for the masses, since the pattern of the nodules on claimant's x-rays were asymmetrical and located "primarily" in

[8] We agree with employer that the administrative law judge repeated her error in referencing Dr. Pugh's reading of an August 2002 CT scan, which was not of record. However, because a preponderance of the CT scan evidence that is of record supports her conclusions in this case, we consider the administrative law judge's error to be harmless. *See Larioni v. Director, OWCP*, 12 BLR 1-1276 (1989).

the apices. *See Peck*, BRB No. 09-0761 BLA, slip op. at 8. The administrative law judge properly considered this aspect of Dr. Wheeler's rationale and rejected it, noting correctly that "while the pattern seen in [claimant's] lungs was located 'primarily' in the apices, it was not confined to that area." Second Decision and Order on Remand at 11; *see* Claimant's Exhibits 5, 6.

In addition, the administrative law judge permissibly rejected Dr. Wheeler's opinion because he required a biopsy to make an exact diagnosis of complicated pneumoconiosis, when the regulations do not *require* claimant to submit biopsy evidence to establish complicated pneumoconiosis. Second Decision and Order on Remand at 10 n.3. Moreover, the administrative law judge noted that Dr. Wheeler relied on the principle that "complicated pneumoconiosis is quite rare, and is seen most frequently in drillers who worked unprotected during and before World War II, when there was no requirement for miners to wear respiratory protection." *Id*. at 11. The administrative law judge found, however, that Dr. Wheeler "has failed to explain why [claimant] could not be one of those young miners, with coal dust exposure in the mines after World War II, who developed complicated coal workers' pneumoconiosis." *Id*. at 12. Thus, because the administrative law judge's credibility findings with regard to the x-ray and CT scan interpretations of Drs. Scatarige, Scott and Wheeler are supported by substantial evidence and are in accordance with the law, they are affirmed.

There is also no merit to employer's contention that the administrative law judge again applied an inconsistent standard in weighing the medical opinions of Drs. Rasmussen, Repsher and Spagnolo, contrary to the Board's instruction. *See Peck*, BRB No. 09-0761 BLA, slip op. at 7-8. On remand, the administrative law judge acknowledged that, unlike Drs. Repsher and Spagnolo, Dr. Rasmussen did not review claimant's medical records in formulating his opinion. The administrative law judge, however, permissibly determined that Dr. Rasmussen's diagnosis of complicated pneumoconiosis was reasoned and documented, based on the parameters of his examination of claimant, which included an x-ray, objective testing and relevant work, medical and smoking histories. Second Decision and Order on Remand at 14; *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274. The administrative law judge permissibly found that, while Drs. Repsher and Spagnolo had access to claimant's medical records, they "did not adequately explain how those records supported their conclusions." *Id*. The administrative law judge specifically found that while Drs. Spagnolo and Repsher cited claimant's medical records as supporting their conclusions, they did not address contrary evidence in the treatment records suggesting that claimant has complicated pneumoconiosis. The administrative law judge also rationally assigned less weight Dr. Spagnolo's opinion, insofar as Dr. Spagnolo relied on Dr. Wheeler's negative x-ray and CT readings, which were rejected by the administrative law judge. Second Decision and Order on Remand at 13 n.6; *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274.

Finally, employer contends that the administrative law judge has not explained her finding of complicated pneumoconiosis in accordance with the Administrative Procedure Act.[9] Employer maintains that because the administrative law judge specifically stated that the evidence considered in isolation at each subsection of 20 C.F.R. §718.304 was insufficient to establish complicated pneumoconiosis, her conclusion that claimant has complicated pneumoconiosis "defies logic." Employer's Brief in Support of Petition for Review at 6. Contrary to employer's assertion, the administrative law judge merely noted at the outset of her analysis of the evidence that there was an equally probative number of positive and negative x-ray readings for complicated pneumoconiosis by qualified radiologists and that the non-ILO x-ray readings contained in the treatment record and the CT scans, standing alone, did not establish complicated pneumoconiosis because they did not contain any equivalency determination.[10] The administrative law judge properly assessed the credibility of the evidence in light of *Cox* and explained why the positive x-ray readings were entitled to controlling weight, and why the evidence as a whole established the existence of the disease. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101 (explaining that "all of the evidence must be considered and evaluated to determine whether the evidence as a whole indicates a condition of such severity that it would produce opacities greater than one centimeter in diameter on an x-ray"). Because it is based upon substantial evidence, we affirm the administrative law judge's finding that claimant established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304.[11] *See Lester*, 993 F.2d at 1145-46, 17

[9] 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), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2).

[10] The Fourth Circuit has held that the administrative law judge must perform an equivalency determination to make certain that, regardless of which diagnostic technique is used, the same underlying condition triggers the irrebuttable presumption. *See Director, OWCP v. Eastern Coal Corp.* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000). Specifically, the court has held that '"[b]ecause prong (A) sets out an entirely objective scientific standard'" - i.e., an opacity on an x-ray greater than one centimeter - x-ray evidence provides the benchmark for determining what, under prong (B), is a "massive lesion" and what, under prong (C), is an equivalent diagnostic result reached by other means. *Id.*; *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-560-61 (4th Cir. 1999).

[11] Employer argues that the administrative law judge violated the law of the case doctrine by finding, in her Second Decision and Order on Remand, that claimant established both simple and complicated pneumoconiosis, when she had not previously

BLR at 2-117-18; *Melnick*, 16 BLR at 1-33-34; *White,* 23 BLR at 1-3. Furthermore, because it is unchallenged on appeal, we affirm the administrative law judge's finding that claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Second Decision and Order on Remand at 15 n.7. We, therefore, affirm the award of benefits in this claim.

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found simple pneumoconiosis established. Employer's Brief in Support of Petition for Review at 17-18. Employer also argues that her finding was not properly explained. Contrary to employer's argument, when the Board vacates an administrative law judge's decision, the effect is to return the parties to the status quo ante with all rights, benefits and/or obligations they had prior to the issuance of the decision. *See Dale v. Wilder Coal Co.*, 8 BLR 1-119 (1985). Therefore, the administrative law judge was permitted to revisit the weight accorded the evidence and render new findings on all of the issues of entitlement. *Id*. Furthermore, because the establishment of simple pneumoconiosis is not a prerequisite to establishing the existence of complicated pneumoconiosis, we consider any error by the administrative law judge in failing to fully explain her finding of simple pneumoconiosis to be harmless. *See Larioni*, 6 BLR at 1-1276.

Accordingly, the administrative law judge's Second Decision and Order on Remand Awarding Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge