BRB No. 13-0535 BLA

JOSEPH G. HROBAK (deceased)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
A B C COAL COMPANY	)	DATE ISSUED: 07/30/2014
	)	
and	)	
	)	
LACKAWANNA CASUALTY COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

A. Judd Woytek (Marshall, Dennehey, Warner, Coleman & Goggin), Bethlehem, Pennsylvania, for employer/carrier.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order Denying Benefits (2011-BLA-05995) of Administrative Law Judge Adele Higgins Odegard (the administrative law judge), rendered on a subsequent claim filed on April 4, 2010,[2] pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge accepted employer's stipulation that claimant worked fifteen years in coal mine employment, of which three years were spent underground. The administrative law judge found, however, that the evidence failed to establish that the remainder of claimant's coal mine employment spent in surface coal mine work was in conditions substantially similar to those of an underground mine. She therefore concluded that claimant was unable to invoke the presumption at amended Section 411(c)(4).[3] In considering claimant's entitlement under 20 C.F.R. Part 718, the administrative law judge determined that the newly submitted evidence established that claimant was totally disabled, and thus, found that a change in an applicable condition of entitlement was demonstrated pursuant to 20 C.F.R. §725.309.[4] The administrative law judge further found, however, that the evidence was insufficient to establish the existence

[1] The record reflects that claimant died on January 30, 2013, while his claim was pending. March 11, 2013 Correspondence from Claimant's Counsel. Claimant's widow is pursuing the claim on his behalf.

[2] Claimant filed three prior claims for benefits, each of which was denied. Director's Exhibits 1-3. Claimant's most recent prior claim, filed on June 24, 1997, was denied by Administrative Law Judge Ainsworth H. Brown on June 9, 1999, because claimant did not establish any of the requisite elements of entitlement. Director's Exhibit 3. The denial was ultimately affirmed by the Board, *Hrobak v. ABC Coal Co.*, BRB No. 03-0660 BLA (June 23, 2004) (unpub.), and the United States Court of Appeals for the Third Circuit, *Hrobak v. ABC Coal Co.*, No. 04-3185 (3d Cir. June 28, 2005) (unpub.). Claimant filed a request for modification, but later requested that it be withdrawn and his case was administratively closed. Claimant took no further action until he filed the current subsequent claim.

[3] Under amended Section 411(c)(4), a miner is entitled to a rebuttable presumption that he 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 impairment. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305.

[4] The Department of Labor has revised the regulation at 20 C.F.R. §725.309, effective October 25, 2013. The language previously set forth in 20 C.F.R. §725.309(d) is now set forth in 20 C.F.R. §725.309(c). 78 Fed. Reg. 59,102, 59,118 (Sept. 25, 2013).

of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and she denied benefits accordingly.

On appeal, claimant challenges the admissibility of two x-ray readings submitted by employer that were not exchanged with claimant within twenty days of the hearing pursuant to 20 C.F.R. §725.456. Claimant also asserts that the administrative law judge erred in determining that claimant's dust exposure in his surface coal mine employment was not comparable to that in an underground mine, and that she erred in weighing the evidence regarding the existence of pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited brief, asserting that the administrative law judge properly determined that claimant failed to establish fifteen years of qualifying coal mine employment. The Director requests, however, that the Board vacate the denial of benefits and remand the case for further consideration as to whether the *uncontradicted* medical opinion evidence establishes that claimant suffered from legal pneumoconiosis.

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.[5] 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. Evidentiary Issue

In order to address claimant's evidentiary challenge, a brief summary of the procedural history of the case is required. The record reflects that claimant underwent an examination at the request of the Department of Labor on June 10, 2010, and an x-ray was taken, which was interpreted as positive for pneumoconiosis by Dr. Lynn. Director's Exhibit 13. On November 5, 2010, employer submitted Dr. Wheeler's negative interpretation of this x-ray. Director's Exhibit 24. The district director awarded benefits and, pursuant to employer's request for a hearing, the case was assigned to Administrative Law Judge Ralph A. Romano, who scheduled a hearing in the case for December 6, 2011. On September 29, 2011, claimant's counsel submitted two positive x-ray readings by Drs. Groten and Ahmed of the June 10, 2010 x-ray. Claimant's Exhibits 1-2. Within twenty days of the hearing, on November 16, 2011, employer requested an enlargement of time to submit a reading of an x-ray film dated July 7, 2010, and to submit the deposition testimony of Dr. Hertz. Claimant, by counsel, objected to

[5] This case arises within the jurisdiction of the Third Circuit, as the miner's coal mine employment was in Pennsylvania. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 6.

employer's request, noting that "the 20 day pre[-]hearing period for submission of evidence ha[d] expired. . . . ." [6] November 30, 2011 Correspondence from Claimant's Counsel.

Prior to the hearing, by cover letter dated December 5, 2011, employer submitted, by mail, two negative readings by Drs. S. Scott and R. Smith of the June 10, 2010 x-ray, marked as Employer's Exhibits 1 and 2. The cover letter addressed to Judge Romano indicated that the x-ray readings had also been mailed to claimant. On the same date, claimant's counsel sent a letter, by facsimile, to Judge Romano, representing that the parties were in agreement that the hearing should be cancelled and that a decision should be issued based on the record.[7] Employer's counsel, Ms. Maureen Herron, appeared at the December 6, 2011 hearing, but claimant's counsel, Ms. Helen Koschoff, did not appear.[8] Judge Romano acknowledged that the parties had agreed to a decision on the record. The following exchange then occurred:

> Judge Romano: I understand that this claim has been paid since June of '11. Is that correct?
> Ms. Herron: That is correct.
> Judge Romano: All right – [claimant's counsel] is not present. And I understand you folks want to submit this case on the record?
> Ms. Herron: That is true. We – [Claimant's counsel] had already submitted her evidence by mail. I have submitted today my evidence by mail. And then the record can close.
> Judge Romano: You mean you have it here?
> Ms. Herron: I do not have it here. I sent it into you by mail.
> Judge Romano: Okay … that must have been very recent because I didn't see it. –
> Ms. Herron: Right – right.

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[6] In a facsimile transmitted to the administrative law judge dated December 6, 2011, employer indicated that it was withdrawing its request for an extension of time to submit the deposition testimony of Dr. Hertz.

[7] Ms. Koschoff alleges that she contacted Ms. Herron, by telephone on December 5, 2011, at which time they agreed to a decision on the record, and she was informed by Ms. Herron that no further evidence was to be submitted by employer.

[8] Ms. Koschoff alleges that she received a call from Judge Romano's office on the morning of the hearing, December 6, 2011, confirming that a Decision and Order would be issued on the record. However, Judge Romano asked that one of the attorneys appear at the hearing to state the agreement on the record.

Judge Romano: As of yesterday?
Ms. Herron: Right.
Judge Romano: They would be what? Do you remember what they were?
Ms. Herron: Yes.
Judge Romano: Because this gets the items into evidence.
Ms. Herron: Absolutely – Employer's Exhibit E-1 is a report of Doctor Smith concerning a chest-x-ray film of June 10, 2010.
Judge Romano: Exhibit E-2 is a report of Doctor Scott regarding the same chest x-ray.
Judge Romano: That's it.
Ms. Herron: That's it.
Judge Romano: Then Employer's E-1 and E-2 – I take it that [claimant's counsel] would not have an objection to that?
Ms. Herron: I don't believe so. I don't know
Judge Romano: I'm assuming she doesn't. If she does - -
Ms. Herron: She could put that in writing.
Judge Romano: The ball's in your court to let me know because we've got to move the evidence in.
Ms. Herron: Okay.
Judge Romano: So Employer's E-1 and E-2 are received, *subject to an objection [by] Ms. Koschoff.*

Hearing Transcript at 6 (emphasis added). The administrative law judge next admitted Director's Exhibits 1-31 and Claimant's Exhibits 1-3 into the record, and indicated that the parties had thirty days to file post-hearing briefs. *Id*. at 2-8. Thereafter, the hearing adjourned. *Id*. at 8.

On December 15, 2011, claimant's counsel filed a Motion to Strike Employer's Exhibits 1 and 2, asserting that they were submitted in violation of the twenty-day rule. In response to claimant's motion, employer argued that Dr. Scott's reading had been "circulated last year," and that Dr. Smith's reading was submitted in conjunction with employer's November 16, 2011 request for an enlargement of time to submit evidence. December 27, 2011 Correspondence from Employer. In an Order dated December 28, 2011, Judge Romano denied claimant's Motion to Strike, stating only that "Claimant's representative chose not to appear at the hearing, and thus waived any objection to these exhibits." Order Denying Motion to Strike at 1. On January 3, 2012, claimant submitted a positive reading of the June 10, 2010 x-ray by Dr. H. Smith. Claimant also filed a

motion for reconsideration on January 16, 2012, which was summarily denied by Judge Romano on February 2, 2012.[9]

Judge Romano later retired and the case was transferred to the administrative law judge. In her Decision and Order Denying Benefits, the administrative law judge stated that she "presume[ed] that by denying the Claimant's motion to strike the Employer's evidence," Judge Romano also denied claimant's request for the admission of Dr. H. Smith's x-ray reading. Decision and Order at 4 n. 7. In weighing the remaining x-ray evidence, which consisted of three positive and three negative readings, the administrative law judge concluded that claimant failed to establish pneumoconiosis at 20 C.F.R. §718.202(a)(1) because the x-ray evidence was in "equipoise." *Id*. at 12.

Claimant asserts that Judge Romano erred in admitting the two x-ray readings submitted by employer in violation of 20 C.F.R. §725.456(b), without making a determination as to whether employer demonstrated good cause for not exchanging the evidence with claimant at least twenty days prior to the hearing. Claimant also asserts that if the evidence is admissible, he is entitled to respond to it. Claimant's assertions of error have merit.

Pursuant to 20 C.F.R. §725.456(b)(2), documentary evidence that was not submitted to the district director may be received in evidence, subject to the objection of any party, if such evidence is sent to all other parties at least twenty days before a hearing is held in connection with the claim. 20 C.F.R. §725.456(b)(2). Evidence not exchanged within twenty days of the hearing may still be admitted at the hearing with the written consent of the parties, or on the record at the hearing, *or upon a showing of good cause*. 20 C.F.R. §725.456(b)(3). If the parties do not waive the twenty day requirement, or good cause is not shown, the administrative law judge shall either exclude the late evidence from the record or remand the claim to the district director for consideration of such evidence. 20 C.F.R. §725.456(b)(3). The United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, and the Board, have held that a party is entitled to respond to evidence that was submitted by the opposing party in violation of 20 C.F.R. §725.456(b), or even immediately prior to the twenty-day deadline.

[9] Claimant's counsel stated that Dr. Scott's reading had not been "circulated" earlier in the year, as alleged by employer. She also pointed out that employer's motion for an extension of time to file evidence was untimely filed within twenty days of the hearing, and that the x-ray readings submitted by employer were not identified in that motion. Claimant's counsel reiterated her request that Employer's Exhibits 1 and 2 be stricken from the record, or in the alternative, that claimant be given an opportunity to submit rebuttal evidence, in the form of the x-ray reading from Dr. H. Smith of the June 10, 2010 x-ray.

American Coal Co. v. Miller, 870 F.2d 948, 12 BLR 2-222 (3d Cir. 1989); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

Furthermore, while the administrative law judge has broad discretion in procedural matters, "the administrative law judge is obliged to insure a full and fair hearing on all the issues presented." *Shedlock*, 9 BLR at 1-200. Where a party would be denied the full presentation of its case, if unable to respond to evidence submitted just prior to or upon the twenty-day deadline, due process requires an opportunity to respond.[10] *Bethlehem Mines Corp. v. Henderson*, 939 F.2d 143, 148-49, 16 BLR 2-1, 2-5 (4th Cir. 1991); *Miller*, 870 F.2d at 951-52, 12 BLR at 2-228-29; *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-49 (1990).

We conclude that Judge Romano abused his discretion in finding that claimant waived the right to object to the admission of Employer's Exhibits 1 and 2, on the ground that claimant's counsel did not appear at the hearing. There is no apparent dispute that counsel for employer and counsel for claimant agreed to a hearing on the record and that Judge Romano was aware of the agreement. With regard to the admission of employer's evidence, because Judge Romano specifically extended claimant's counsel the right to file an objection, it was irrational for Judge Romano to summarily deny her Motion to Strike, on the ground that she did not appear at the hearing. Moreover, claimant's counsel explained her exchanges with employer's counsel in her Motion to Strike, but Judge Romano did not address her contention that she was unaware that employer intended to submit additional evidence at the hearing. We also find the administrative law judge's ruling to be unreasonable, given that claimant specifically objected to employer's November 16, 2011 request for an extension of time to submit additional evidence within twenty days of the hearing by correspondence dated November 30, 2011. *See King v. Cannelton Industries, Inc.*, 8 BLR 1-146, 1-148 (1985); *Witt v. Dean Jones Coal Co.*, 7 BLR 1-21, 1-23 (1984).

With regard to 20 C.F.R. §725.456(b), Judge Romano erred in failing to address whether employer established good cause for the admission of the two late x-ray readings. *See Morgan v. Director, OWCP*, 8 BLR 1-491 (1986). Therefore, we vacate the administrative law judge's denial of benefits and remand this case for the administrative law judge to determine whether employer established good cause for the

[10] The Administrative Procedure Act, as incorporated into the Act by 30 U.S.C. §932(a), provides in relevant part that, "[a] party is entitled to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. §556(d).

late submission of its evidence pursuant to 20 C.F.R. §725.456(b)(2), (3). If so, the administrative law judge must determine whether the readings are admissible, taking into consideration the evidentiary limitations at 20 C.F.R. §725.414.

Finally, we agree with claimant that Judge Romano erred in denying claimant an opportunity to provide rebuttal evidence, a finding that the administrative law judge adopted in her Decision and Order Denying Benefits. The regulation at 20 C.F.R. §725.456(b)(4) provides that "a medical report which is not made available to the parties in accordance with paragraph (b)(2) of this section shall not be admitted into evidence in any case unless the hearing record is kept open for at least [thirty] days after the hearing to permit the parties to take such action as each considers appropriate in response to such evidence." 20 C.F.R. §725.456(b)(4). If employer's x-ray readings are admitted into evidence, claimant must be provided an opportunity to respond to that evidence under 20 C.F.R. §725.456(b)(4), and in accordance with the evidentiary limitations at 20 C.F.R. §725.414.

II. Invocation of the Amended Section 411(c)(4) Presumption

In the interest of judicial economy, we also address claimant's additional arguments. Claimant first argues that the administrative law judge erred in finding that he did not establish fifteen years of qualifying coal mine employment for invocation of the amended Section 411(c)(4) presumption. Initially, we affirm as unchallenged, the administrative law judge's determinations that claimant worked three of his fifteen years in underground coal mine work, and the remaining twelve years were in "above ground strip mining." Decision and Order at 5; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). To invoke the amended Section 411(c)(4) presumption, claimant must establish that his surface coal mine work was "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b)(1)(i). The regulation at 20 C.F.R. §718.305(b)(2) specifically states that the "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the evidence demonstrates *that the miner was regularly exposed to coal-mine dust while working there*." 20 C.F.R. §718.305(b)(2) (emphasis added). To prove that working conditions at a surface mine were substantially similar to those in an underground mine, a claimant must provide sufficient evidence of dust exposure in his or her work environment. *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001). It is then for the administrative law judge "to compare the surface mining conditions established by the evidence to conditions known to prevail in underground mines." *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512 (7th Cir. 1988); *see Alexander v. Freeman United Coal Mining Co.*, 2 BLR 1-497 (1979).

In this case, the administrative law judge conducted the proper inquiry. She observed that claimant completed the Form CM911-a (Listing of Coal Mine Employment), and checked a box indicating that he was exposed to "dust, gases, or fumes" in his coal mine work. The administrative law judge, however, found that "there is no other evidence of record" regarding claimant's dust exposure. Decision and Order at 6. The administrative law judge noted correctly that claimant "did not testify" in his prior claim as to "the level of dust exposure [he] may have experienced" in his surface coal mine employment, operating a bulldozer and jackhammer. *Id*. Because claimant has the burden of proof and has not demonstrated error in the administrative law judge's consideration of the evidence, we affirm the administrative law judge's finding that claimant did not establish that his surface coal mine employment was under conditions substantially similar to those of an underground mine. *See Summers*, 272 F.3d at 482-83; 22 BLR at 2-280; *Leachman*, 855 F.2d at 512. Consequently, we affirm the administrative law judge's finding that claimant failed to establish fifteen years of qualifying coal mine employment and is ineligible to invoke the presumption at amended Section 411(c)(4).

III. Existence of Pneumoconiosis

Relevant to 20 C.F.R. 718.202(a)(1), claimant challenges the administrative law judge finding that Dr. R. Smith was dually qualified as a Board-certified radiologist and B reader. Claimant notes that while Dr. R. Smith's curriculum vitae indicates that he was certified by NIOSH as a B-reader in 2001, there is no information pertaining to whether he was a B reader on December 28, 2011, the date he read the June 10, 2010 x-ray. Claimant contends that the administrative law judge abused her discretion in stating that, "[i]n the absence of evidence to the contrary, I will presume that Dr. Smith maintained his B-reader certification through the date he interpreted the Claimant's x-ray." Decision and Order at 12 n.20. Contrary to claimant's argument, however, we conclude that the administrative law judge's inference was rational and within her discretion.[11] *See Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc). Therefore, if the administrative law judge, on remand, determines that Dr. R. Smith's reading is admissible, she may again find that he is a dually qualified radiologist.

Pursuant to 20 C.F.R. §718.202(a)(4), claimant contends that the administrative law judge erred in finding the opinions of Drs. Olenginski and Rothfleisch to be

[11] Moreover, Dr. R. Smith specifically check-marked a box on the ILO International Classification of the Pneumoconioses-2000 Form, indicating that he was providing a "B" reading.

insufficient to establish the existence of clinical or legal pneumoconiosis.[12] We agree. Dr. Olenginski opined that claimant "suffered significant pulmonary insult secondary to his occupational exposure, and thus, to whatever extent, does suffer from anthrasilicosis." Director's Exhibit 12. Dr. Rothfleisch diagnosed coal workers' pneumoconiosis, and opined that coal dust exposure is a major and most important contributing factor in claimant's disabling respiratory impairment. Director's Exhibit 13. The administrative law judge found that while Dr. Olenginski treated claimant, his opinion was speculative and conclusory and entitled to little weight. Decision and Order at 16-17. *Id*. She paraphrased Dr. Olenginski's opinion as follows:

> Dr. Olenginski stated that the Claimant's condition is *probably* due to many factors ("multifactorial") and then stated it is "*hard to imagine*" that the Claimant's coal mine employment is not a factor ("causing or at the very least, significantly contributing to his present demise.").

Decision and Order at 16-17, *quoting* Director's Exhibit 12 (emphasis added).

Contrary to the administrative law judge's characterization, Dr. Olenginski also stated that the medical picture of claimant "*almost assuredly* makes the etiology of his lung disease multifactorial." Director's Exhibit 12 (emphasis added). Dr. Olenginski's use of the phrase "hard to imagine" does not render his opinion equivocal. *Id.* A "reasoned medical opinion is not rendered a nullity because it acknowledges the limits of reasoned medical opinions" or because it contains qualifying or conditional language. *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763, 21 BLR 2-587, 2-605 (4th Cir. 1999); *see also Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *Endrizzi v. Bethlehem Mines Corp.*, 8 BLR 1-11, 1-13 (1985). Moreover, physicians are not required to determine the precise percentage of a miner's lung obstruction that is attributable to coal mine dust exposure. *See Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 2-372 (4th Cir. 2006); *Cornett v. Benham Coal, Inc.*, 227

[12] Clinical pneumoconiosis consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000) (miner was not required to demonstrate that coal dust was the only cause of his current respiratory problems). Thus, we vacate the administrative law judge's credibility determination with regard to Dr. Olenginski and her finding that claimant did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). On remand, the administrative law judge should reconsider Dr. Olenginski's opinion on the issue of legal pneumoconiosis. Moreover, because the administrative law judge only weighed Dr. Olenginski's opinion on the issue of the existence of legal pneumoconiosis, she should also consider whether Dr. Olenginski's diagnosis of anthrasilicosis meets the regulatory definition of clinical pneumoconiosis, discussed *supra* n. 12. *See* Director's Exhibit 12.

Additionally, although the administrative law judge considered the opinions of Drs. Olenginski and Rothfleisch to be "conclusory," she did not address whether they are sufficiently reasoned to satisfy claimant's burden of proof, as these opinions, that claimant has pneumoconiosis, are uncontradicted in the record.[13] Therefore, we vacate the administrative law judge's findings at 20 C.F.R. §718.202(a)(4), and remand the case for further consideration of whether claimant has established the existence of clinical or legal pneumoconiosis. *See Amax Coal Co. v. Beasley*, 957 F.2d 324, 327, 16 BLR 2-45, 2-48 (7th Cir. 1992); *Young v. Barnes & Tucker Co.*, 11 BLR 1-147 (1988); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985).

In summary, we vacate the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis or total disability due to pneumoconiosis, pursuant to 20 C.F.R. §§718.202(a), 718.204(c), and the denial of benefits. On remand, the administrative law judge must determine whether employer established good cause for the late submission of evidence. If the administrative law judge finds that employer has established good cause, she must provide claimant an opportunity to respond to that evidence. Once the administrative law judge has resolved the outstanding evidentiary issue, she should reweigh the x-ray and medical opinion evidence relevant to the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), (4) and total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), consistent with this opinion. Because claimant satisfied his burden to establish a change in an applicable condition of entitlement, the administrative law judge must weigh all of the record evidence, including the evidence from claimant's prior claims, relevant to his entitlement. In reaching her findings on remand, the administrative law judge must explain her credibility

[13] The Director, Office of Workers' Compensation Programs, maintains that the opinion of Dr. Rothfleisch, who performed the Department of Labor-sponsored examination, is sufficiently documented and reasoned to support a finding that claimant has legal pneumoconiosis. Director's Brief at 3.

determinations in accordance with the Administrative Procedure Act. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge