U.S. Department of Labor

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

BRB No. 17-0561 BLA

WILLIAM R. RUSSELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BLUFF SPUR COAL CORPORATION	)	DATE ISSUED: 07/31/2018
	)	
Employer-Respondent	)	
	)	
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 Paul R. Almanza, Administrative Law Judge, United States Department of Labor.

William R. Russell, Pennington Gap, Virginia.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2013-BLA-05669) of Administrative Law Judge Paul R. Almanza, rendered on a miner's claim filed on May 29, 2012, 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 the parties' stipulation to 38.25 years of underground coal mine employment but determined that claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis because he did not establish that he has a totally disabling respiratory or pulmonary impairment.[1] 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b)(1)(iii). The administrative law judge also found that claimant did not establish the existence of complicated pneumoconiosis and, therefore, did not invoke the irrebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Based on his determination that claimant did not establish total disability, an essential element of entitlement, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits.[2] Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not filed a substantive response brief in this appeal.[3]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). We must affirm the findings of the administrative law judge if they are rational, and are 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).

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[1] Under Section 411(c)(4) of the Act, claimant's total disability is presumed to be due to pneumoconiosis if he 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); 20 C.F.R. §718.305(b).

[2] Robin Napier, a lay representative with Stone Mountain Health Services of St. Charles, Virginia, filed a letter requesting that the Board review the administrative law judge's decision, but she is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[3] We affirm the administrative law judge's crediting of claimant with 38.25 years of coal mine employment, as it is based on the parties' stipulation and is unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[4] Because claimant's last coal mine employment was in Virginia, we will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 6, 7.

Initially, we will review the administrative law judge's determinations that claimant could not establish entitlement to benefits by invoking a presumption that he has pneumoconiosis and is totally disabled by it.

I. Invocation of the Section 411(c)(3) Presumption – Existence of Complicated Pneumoconiosis

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 is totally disabled 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; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). 20 C.F.R. §718.304. The administrative law judge must determine whether each separate type of evidence tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b), and (c), before determining whether claimant has invoked the irrebuttable presumption. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc). In this case, the administrative law judge found that claimant did not establish complicated pneumoconiosis under any of the subsections of 20 C.F.R. §718.304.

A. 20 C.F.R. § 718.304(a) – X-ray Evidence

The administrative law judge considered twelve readings of six x-rays dated August 30, 2011, October 27, 2011, September 24, 2012, December 9, 2013, June 23, 2014 and January 23, 2015. The administrative law judge weighed interpretations of the August 30, 2011 x-ray by three physicians who are dually qualified as B readers and Board-certified radiologists. Decision and Order at 17. Drs. Scott and Smith did not identify any large opacities consistent with complicated pneumoconiosis.[5] Director's Exhibit 17; Employer's Exhibit 16. In contrast, Dr. Alexander identified a size "A" large opacity, and commented that he observed "a [twelve millimeter] large opacity in [the right] upper zone . . . which could be category A complicated [coal workers' pneumoconiosis] or lung cancer – this

[5] Dr. Scott observed an "[i]rregular [two centimeter] mass [in the] right apex," which he attributed to "possible cancer, [tuberculosis], atypical [tuberculosis] on scan." Director's Exhibit 17. Dr. Smith observed findings consistent with simple clinical pneumoconiosis but did not identify any large opacities. Employer's Exhibit 16.

needs further evaluation." Director's Exhibit 13. The administrative law judge permissibly found that the August 30, 2011 x-ray is negative for complicated pneumoconiosis, despite the diagnosis by Dr. Alexander, because he did not definitively identify the cause of the mass he observed.[6] *See Melnick*, 16 BLR at 1-37; Decision and Order at 17. The administrative law judge also accurately determined that the October 27, 2011 x-ray is negative for complicated pneumoconiosis, as Dr. Powers, who provided the only reading of this x-ray, did not diagnose the disease.[7] Decision and Order at 17-18; Claimant's Exhibit 4.

Regarding the September 24, 2012 x-ray, the administrative law judge considered interpretations by Drs. DePonte, Miller, and Scott, all of whom are dually qualified. Decision and Order at 18. Drs. DePonte and Miller identified category "A" large opacities consistent with pneumoconiosis, while Dr. Scott concluded that the x-ray is negative for complicated pneumoconiosis. Director's Exhibits 11, 13, 17. Dr. DePonte commented that the opacity she observed "may represent [a] large opacity of [coal workers' pneumoconiosis] but is suspicious for lung carcinoma." Director's Exhibit 11. Similarly, Dr. Miller described a "2 x 1 [centimeter right upper lung] mass" and set forth a differential diagnosis of complicated coal workers' pneumoconiosis or cancer. Director's Exhibit 13. Based on the administrative law judge's permissible finding that Drs. DePonte and Miller "expressed a lack of certainty in [their] diagnosis by raising the possibility that the large opacity identified might be cancer[,]" we affirm his determination that this x-ray is insufficient to establish the existence of complicated pneumoconiosis. Decision and Order at 18; *see Lester v. Director, OWCP*, 993 F.2d 1143, 1146, 17 BLR 2-114, 2-118 (4th Cir. 1993); *see also Yogi Mining Co. v. Fife*, 159 Fed. Appx. 441, slip op. at 7-8 (4th Cir. Dec. 7, 2005) (unpub.) (an administrative law judge acted within his discretion in discounting the opinions of employer's doctors because they were equivocal).

The administrative law judge rationally determined that the December 9, 2013 and June 23, 2014 x-rays are in equipoise because they were interpreted by Dr. DePonte as positive for complicated pneumoconiosis, and as negative by Dr. Adcock, who is also a dually-qualified radiologist. Decision and Order at 18; Claimant's Exhibits 1, 3; Employer's Exhibits 2, 17. Finally, Dr. Cohen, whose credentials are not in the record,

[6] Dr. Alexander noted a large opacity in the right upper zone "which could be category "A" CWP or lung cancer- -this needs further evaluation." Director's Exhibit 13.

[7] Dr. Powers's interpretation is contained in claimant's treatment records and was performed post-bronchoscopy. Claimant's Exhibit 4. Dr. Powers, whose credentials are not of record, described a "[v]ague ill-defined right apical nodular mass-like density poorly seen on the screening portable chest" but did not classify the mass as complicated pneumoconiosis. *Id.*

observed a 1.9 x 1.3 centimeter of "abnormal density" and "undetermined cause" on the x-ray dated January 23, 2015. Claimant's Exhibit 5. However, as the administrative law judge permissibly found, identification of a large density alone does not constitute a diagnosis of complicated pneumoconiosis. *See Lester*, 993 F.2d at 1144, 17 BLR at 2-115-16; Decision and Order at 18. Because the administrative law judge rationally found that none of the x-rays are positive for complicated pneumoconiosis, we affirm his finding that claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See Cox*, 602 F.3d at 283, 24 BLR at 2-280-81.

B. 20 C.F.R. §718.304(b) – Biopsy Evidence

Claimant underwent a transbronchial biopsy on October 27, 2011 and the record contains Dr. Emory's surgical pathology and cytopathology reports. Director's Exhibit 13; Claimant's Exhibit 4. Dr. Emory did not mention pneumoconiosis in the final diagnosis on either report, but on her cytopathology report in a section labeled "Other Clinical Conditions," she listed "mass" and "Additional information Pneumoconiosis." *Id*. The administrative law judge permissibly found that the biopsy reports are insufficient to satisfy claimant's burden at 20 C.F.R. §718.304(b) because Dr. Emory did not definitively diagnose complicated pneumoconiosis or massive lesions in the lung. 20 C.F.R. §718.305(b); *see Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561 (4th Cir. 1999), Decision and Order at 19.

C. 20 C.F.R. §718.304(c) and the Evidence as a Whole

At 20 C.F.R. §718.304(c), the administrative law judge reviewed computed tomography (CT) scans, positron emission tomography (PET) scans, and medical opinions. Decision and Order at 19-23.

1. Tomography Scans

The administrative law judge initially addressed whether CT and PET scans are medically acceptable techniques for diagnosing the presence or absence of complicated pneumoconiosis under 20 C.F.R. §718.107(b). The administrative law judge reasonably relied on the opinions of Drs. Wheeler, Adcock, and Rosenberg that CT scans are more accurate than x-rays to find that the CT scan evidence met the requirements of 20 C.F.R.

§718.107(b).[8] *See Webber v. Peabody Coal Co.*, 23 BLR 1-123, 135-136 (2006) (en banc) (Boggs, J., concurring), *aff'd on recon.*, 24 BLR 1-1 (2007) (en banc); Decision and Order at 19; Director's Exhibit 17; Employer's Exhibits 5-6, 11, 13, 15. However, the administrative law judge permissibly found that PET scan interpretations are not acceptable for assessing whether claimant has pneumoconiosis, based on Dr. Hoffnung's uncontradicted statement that "unless there is absence of activity within lesions[,] PET [s]can is not useful for differentiation from neoplasm."[9] Director's Exhibit 13; 20 C.F.R. §718.107(b); *see Webber*, 23 at 135-136.

To establish complicated pneumoconiosis based on CT scans, there must be evidence establishing that any large masses identified would be at least equivalent in size to a one centimeter opacity diagnosed by x-ray. *See Scarbro*, 220 F.3d at 255-56, 22 BLR at 2-100. The record contains seventeen readings of eight CT scans. Dr. DePonte, a Board-certified radiologist, interpreted the CT scan dated September 28, 2011 as showing a "3.1 x 0.9 cm. opacity in the right apex" that "is more likely related to [a] conglomerate mass of coal workers[']s pneumoconiosis rather than neoplasm." Director's Exhibit 13. Dr. Wheeler, also a Board-certified radiologist, observed "moderate centrilobular emphysema scattered in both lungs and [a] 2.7 cm bleb in [the] upper right apex." Director's Exhibit 17. Dr. Wheeler explained, "masses in apices are not large opacities of [coal workers' pneumoconiosis] because of their high location and lack of background nodules." *Id*. We affirm as rational and supported by substantial evidence the administrative law judge's determination that this CT scan is insufficient to establish complicated pneumoconiosis because the positive and negative interpretations are "equally balanced." *See Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); Decision and Order at 20.

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[8] Dr. Wheeler indicated that computed tomography (CT) scans are "accepted world[]wide as the most accurate radiological modality providing the finest anatomic detail in cross section without overlying bone and soft tissues, including patterns compatible with pneumoconiosis." Director's Exhibit 17. Dr. Adcock opined that high resolution CT scans are superior to x-rays for evaluating pneumoconiosis. Employer's Exhibits 6, 15. Dr. Adcock also stated that conventional CT scans are superior to x-rays for the evaluation of small pulmonary opacities but that they are equal concerning the evaluation of large opacities. Employer's Exhibits 11, 13. Dr. Rosenberg indicated that CT scans are medically acceptable and more accurate than x-rays for evaluating the existence of pneumoconiosis. Employer's Exhibit 5.

[9] The administrative law judge also noted that even if he considered the two interpretations of the October 4, 2011 positron emission tomography (PET) scan, it would not alter his overall finding concerning the tomography scan evidence because neither interpretation included a diagnosis of complicated pneumoconiosis or massive fibrosis. Decision and Order at 19; Director's Exhibit 13; Employer's Exhibit 10.

The administrative law judge permissibly found that the interpretations of the remaining CT scans of record, dated December 19, 2011, April 30, 2012, November 16, 2012, May 20, 2013, October 25, 2013, June 17, 2014, and November 19, 2015, do not support a diagnosis of complicated pneumoconiosis, as none of the physicians reading these scans diagnosed complicated pneumoconiosis or progressive massive fibrosis.[10] *See*

[10] Regarding the December 19, 2011 CT scan, Dr. Kaffenberger observed "scattered ill-defined densities in both upper lobes, especially the somewhat more confluent irregular density in the right apex . . . . These areas are associated with emphysematous lung changes." Director's Exhibit 13. After reading the same scan, Dr. Adcock diagnosed "[s]imple coal workers' pneumoconiosis, minimal extent" but did not diagnose complicated pneumoconiosis. Employer's Exhibit 11. With respect to the April 30, 2012 CT scan, Dr. Fish observed "[m]ultiple subpleural noncalcified nodular densities involv[ing] both lungs, predominantly in the upper lobes." Director's Exhibit 13. Dr. Adcock identified "[s]table mild-to-moderate fibrosis of the apical right upper lobe, and minimal-to-mild fibrosis of the left upper lobe without mass-like characteristics." Employer's Exhibit 13. Dr. Coleman read the November 16, 2012 CT scan as reflecting the "[s]table appearance of the upper lobes again demonstrating architectural distortion and areas of irregular speculated density likely representing scarring" as well as "diffuse centrilobular emphysematous changes." Director's Exhibit 14. Dr. Wheeler commented that this CT scan showed no coal workers' pneumoconiosis and stated that "[m]asses are in apices with [a] small one in [the] lateral periphery [left upper lobe] involving pleura which is typical of granulomatous disease." Director's Exhibit 17. Dr. Jaksha read the scan as revealing that the irregular opacity he had previously observed in the right upper lung was "significantly changed." Employer's Exhibit 12. With respect to the CT scan dated May 20, 2013, Dr. Hutchinson observed "[s]carring in the pulmonary apices, it appears similar to the several preceding exams." Claimant's Exhibit 4. Dr. Adcock identified "[m]ild centrilobular emphysema" and "[b]ilateral upper lobe fibrosis." Employer's Exhibit 14. Drs. Johnstone and Adcock read the October 25, 2013 CT scan. Dr. Johnstone found "[r]edemonstration of stable pattern of bilateral pulmonary apical scarring." Claimant's Exhibit 4. Dr. Adcock identified "[m]ild centrilobular emphysema" and "[b]ilateral upper lobe fibrosis." Employer's Exhibit 15. The June 17, 2014 CT scan was read by Dr. Barker as showing an "irregular increased opacity in the upper lungs, right side more so than left." Claimant's Exhibit 4. Dr. Adcock stated, "[t]he fibrosis pattern is also highly consistent with the commonly observed changes of remote, subclinical tuberculosis. The absence of associated small nodularity and the stability of the fibrotic lesions through two and one-half years of follow-up strongly militates against complicated pneumoconiosis." Employer's Exhibit 6. Regarding the November 19, 2015 CT scan, Dr. Egner reported "focal speculated densities within the upper lobes with associated superior hilar retraction. This has the appearance of pulmonary fibrosis. Underlying malignancy cannot be completely excluded." Claimant's Exhibit 5.

Blankenship, 177 F.3d at 243-44, 22 BLR at 2-561-62; Decision and Order at 20-22. We therefore affirm the administrative law judge's finding and further affirm his determination that the CT scan evidence is insufficient to establish complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 255-56, 22 BLR at 2-100.

2. Medical Opinion Evidence

In evaluating the medical opinion evidence at 20 C.F.R. §718.304(c), the administrative law judge considered the diagnoses of complicated pneumoconiosis made by Drs. Habre, Isber and Litton. Decision and Order at 22-23. Dr. Habre examined claimant on September 24, 2012, and based his diagnosis of complicated pneumoconiosis on a chest x-ray of the same date that was read as showing a Category A large opacity. Director's Exhibit 11. Dr. Isber examined claimant and reviewed a variety of x-ray and CT scan interpretations in diagnosing coal workers' pneumoconiosis and a right upper lobe mass, which he described as "probably [an] old scar, cannot rule out associated cancer." Claimant's Exhibit 5. He also noted readings of claimant's CT scans that report: "[S]tability in the right upper lobe mass, dated back to 2011. That goes with benign etiology, could be complicated pneumoconiosis or old granulomatous lung disease." *Id*. In addition, Dr. Isber reviewed an x-ray "done at Tennova LaFollette . . . via the PACS System," and stated, it "certainly fits Coal Miner Pneumoconiosis. It became complicated due to his previous concomitant smoking and emphysema." *Id*. Dr. Litton was a treating physician whose notes appear in claimant's treatment records. Director's Exhibit 13. In one note, Dr. Litton referred to a reading of a CT scan dated September 28, 2011, that described an opacity in the right lung that "is more likely related to [a] conglomerate mass of coal workers[']pneumoconiosis rather than neoplasm."[11] Director's Exhibit 13.

The administrative law judge found that Dr. Habre's diagnosis of complicated pneumoconiosis was not adequately reasoned and documented because he relied on positive x-ray reading, contrary to the x-ray finding of the administrative law judge. Decision and Order at 23. In light of our affirmance of the administrative law judge's findings that none of the x-rays and CT scans were sufficient to establish complicated pneumoconiosis, we also affirm his decision to accord little weight to Dr. Habre's medical opinion. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997). We also affirm, as rational and supported by substantial evidence, the administrative law judge's determination that the diagnoses made by Drs. Isber and Litton were too uncertain to constitute definitive diagnoses of complicated pneumoconiosis. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17, 25 BLR 2-115,

[11] Dr. Litton also conducted a PET scan, concluding that "the PET scan is not useful for differentiation from neoplasm" of the density in the right upper lobe. Director's Exhibit 13.

2-133 (4th Cir. 2012); Decision and Order at 23. We therefore further affirm the administrative law judge's finding that the medical opinion evidence was insufficient to establish the existence of complicated pneumoconiosis under 20 C.F.R. §718.304(c). *See Scarbro*, 220 F.3d at 255-56, 22 BLR at 2-100-01; Decision and Order at 23.

3. Weighing All Evidence Together

In weighing the evidence as a whole, the administrative law judge stated, "[b]ecause the evidence does not demonstrate the existence of complicated pneumoconiosis under Section 718.304(a), (b), or (c), I find that [c]laimant has not established invocation of the presumption under Section 718.304." Decision and Order at 23. Although an administrative law judge is obligated to make findings at 20 C.F.R. §718.304(a), (b) and (c), as the administrative law judge did here, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has made clear that the key part of the analysis is whether the evidence, considered as a whole, is sufficient to establish the existence of complicated pneumoconiosis. *See Cox*, 602 F.3d at 285-87, 24 BLR at 2-282-84; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101; Decision and Order at 34. This requires the administrative law judge to go behind the findings rendered under the individual subsections of 20 C.F.R. §718.304 and determine whether the evidence supporting a finding of complicated pneumoconiosis preponderates over the contrary evidence. *See Cox*, 602 F.3d at 283-85, 24 BLR at 2-282-83; *see also Pittsburg & Midway Coal Co.* [*Cornelius*], 508 F.3d 975, 986-87, 24 BLR 2-72, 2-92 (11th Cir. 2007) (an administrative law judge is required to "carefully examine the medical evidence presented to determine whether complicated pneumoconiosis exists on the unique facts of each case.").

In this case, the administrative law judge's cursory conclusion is not sufficient to satisfy the required analysis. Under subsection (a), the administrative law judge considered x-ray readings in which Drs. Scott, Alexander, DePonte and Miller observed large opacities but could not definitively attribute to complicated pneumoconiosis because they might represent cancer or healed infectious disease. Director's Exhibits 11, 13, 17, 18. When weighing all the relevant evidence together, however, the administrative law judge did not

address evidence from subsections (b) and (c) that could affect the consideration of the evidence pertinent to section (a).[12]

Consequently, we must vacate the administrative law judge's finding at 20 C.F.R. §718.304, and his denial of benefits, and remand the case for additional consideration. On remand, the administrative law judge must weigh together all medical evidence relevant to the diagnosis of complicated pneumoconiosis, after considering whether the weight to be accorded evidence from one section is affected by evidence offered in another. The administrative law judge must also explain his findings in compliance with the Administrative Procedure Act.[13] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

In the interest of justice, we also consider the administrative law judge's weighing of the evidence concerning total disability.

II. Invocation of the Section 411(c)(4) Presumption – Total Disability

The administrative law judge next considered whether claimant established that he has a totally disabling respiratory or pulmonary impairment, thereby invoking the rebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(iii); Decision and Order at 24. The regulations provide that a miner will be considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a

[12] For example, Dr. Emery's pathology reports from the transbronchial biopsy and bronchial washing of October 27, 2011 diagnosed "no malignancy," Claimant's Exhibit 4, and a November 1, 2012 tuberculosis skin test report was negative, Director's Exhibit 13, as were reports for sarcoidosis and histoplasmosis tests, performed on November 21, 2012 and December 25, 2012, respectively, Director's Exhibits 14, 15. Furthermore, in considering the medical opinion evidence, the administrative law judge did not analyze the opinion of Dr. Rosenberg (whose opinion does not support finding complicated pneumoconiosis), as he found there was no documented and reasoned opinion supporting the existence of complicated pneumoconiosis. However, in assessing the evidence as a whole, he must consider the opinions of all of the physicians as they relate to assessing the other evidence of complicated pneumoconiosis.

[13] 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. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

miner's disability is established by: (i) pulmonary function studies; (ii) arterial blood-gas studies; (iii) medical evidence showing that the miner has pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or (iv) the opinion of a physician who, exercising reasoned medical judgment, concludes that a miner's respiratory or pulmonary condition is totally disabling, based on medically acceptable clinical and laboratory diagnostic techniques. 20 C.F.R. §718.204(b)(2)(i)-(iv). If an administrative law judge finds that total disability has been established under one or more subsections, he or she must weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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 correctly determined that claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii), as none of the pulmonary function studies or blood gas studies are qualifying[14] and there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 24; Director's Exhibits 11, 16; Claimant's Exhibit 4; Employer's Exhibit 2. In weighing the medical opinion evidence at 20 C.F.R. §718.204(b)(iv), the administrative law judge rationally found that Drs. Habre[15] and Rosenberg did not diagnose claimant with a totally disabling respiratory impairment and that Dr. Isber did not specifically address the issue. *See Lane v. Union Carbide Corp.*,

[14] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[15] Dr. Habre stated that claimant "did not show evidence of complete disabling lung disease" and "will be able to perform his last coal mine job." Director's Exhibit 11. The administrative law judge did not address Dr. Habre's subsequent statement that "[t]he cumulative dust exposure will worsen his respiratory status and he definitely cannot be advised to have any further exposure to coal mine dust." *Id*. However, such error is harmless, as Dr. Habre concluded that claimant "did not have currently[,] based on this review[,] disabling lung function." *Id.*; *see Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988). Further, well-established precedent holds that a prohibition on further dust exposure is not a diagnosis of a totally disabling respiratory or pulmonary impairment. *See Migliorini v. Director, OWCP*, 898 F.2d 1292, 1296, 13 BLR 2-418, 2-425 (7th Cir. 1990); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83, 1-88 (1988). Dr. Rosenberg concluded that "from a pulmonary perspective, [claimant] is not disabled from performing his previous coal mining job or other similarly arduous types of labor." Employer's Exhibit 2. Dr. Isber stated that claimant had a "[l]ack of restriction on his lung function test," but did not otherwise address total disability. Claimant's Exhibit 5.

105 F.3d 166, 171, 21 BLR 2-34, 2-42 (4th Cir. 1997); Decision and Order at 24; Director's Exhibit 11; Claimant's Exhibit 5; Employer's Exhibits 2, 5. The administrative law judge also correctly stated that the hospital and treatment notes are silent on total disability. Decision and Order at 24; Director's Exhibits 13, 16; Claimant's Exhibits 4-6; Employer's Exhibits 7-9. The administrative law judge reasonably concluded, after weighing all relevant evidence together, that claimant did not establish total disability at 20 C.F.R. §718.204(b)(2), an essential element of entitlement.[16] 20 C.F.R. §§718.3, 718.204; *see Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *see also Defore*, 12 BLR at 1-28-29; Decision and Order at 24.

We therefore affirm the administrative law judge's finding that claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(iii); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-698-99 (4th Cir. 2015). Consequently, should the administrative law judge again find on remand that claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304, he may reinstate his denial of benefits.

[16] To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis; that the pneumoconiosis arose out of coal mine employment; a totally disabling respiratory or pulmonary impairment; and that his total respiratory or pulmonary disability is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

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 proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge