BRB No. 08-0786 BLA
and 08-0786 BLA-A

D.W.	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
HOBET MINING, INCORPORATED	)	
	)	DATE ISSUED: 06/30/2009
Employer-Respondent	)	
Cross-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand – Denying Benefits of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order on Remand – Denying Benefits (06-BLA-5012) of Administrative Law Judge Daniel L. Leland (the administrative law judge) rendered on a subsequent claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30

U.S.C. §901 *et seq.* (the Act).[1] This case is before the Board for the second time. Initially, the administrative law judge credited claimant with thirty-three years and eight months of coal mine employment.[2] Recognizing that this case involves a subsequent claim, the administrative law judge addressed the issue of total respiratory disability at 20 C.F.R. §718.204(b), as this issue was adjudicated against claimant in the prior claim. Decision and Order at 2, 6. The administrative law judge found that the new evidence did not establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), but established invocation of the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R. §718.304. The administrative law judge therefore found that claimant established both a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d), and entitlement to benefits, commencing as of August 4, 2004.

In response to employer's appeal, the Board affirmed in part, and vacated in part, the administrative law judge's award of benefits and remanded the case for further consideration. *D.W. v. Hobet Mining, Inc.*, BRB No. 07-0496 BLA (Mar. 28, 2008)(unpub.). Specifically, the Board affirmed the administrative law judge's evidentiary rulings, pursuant to 20 CF.R. §725.414, but vacated the administrative law judge's finding of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *D.W.*, slip op. at 3-5, 9. Pursuant to 20 C.F.R. §718.304(a), the Board instructed the administrative law judge to consider Dr. Rosenberg's reading of the April 18, 2005 x-ray, together with the physician's explanation that the large opacities he noted were not consistent with pneumoconiosis, before determining whether Dr. Rosenberg's reading establishes large opacities of complicated pneumoconiosis. *D.W.*, slip op. at 9. Pursuant to 20 C.F.R. §718.304(c), the Board instructed the administrative law judge to reweigh the newly submitted computerized tomography (CT) scan and medical opinion evidence, while maintaining the burden of proof on claimant to establish the existence of complicated pneumoconiosis. *D.W.*, slip op. at 9. Additionally, the Board instructed the

[1] Claimant's first claim for benefits, filed on August 6, 1997, was denied on January 9, 1998. Director's Exhibit 1. Claimant's second claim, filed on February 5, 1999, was denied on June 3, 1999. Director's Exhibit 2. Claimant's third claim, filed on February 12, 2001, was denied on September 4, 2002. Director's Exhibit 3. All of claimant's prior claims were denied because claimant did not establish total disability due to pneumoconiosis. Claimant filed his current claim on August 2, 2004. Director's Exhibit 5.

[2] The record indicates that claimant's coal mine employment was in West Virginia. August 30, 2006, Hearing Transcript at 36. Accordingly, this case arises within the jurisdiction 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*).

administrative law judge to consider the opinions of Drs. Ranavaya, Repsher, and Rosenberg, in light of their documentation and reasoning, and the qualifications of the physicians.[3] *D.W.*, slip op. at 9. Finally, the Board vacated the administrative law judge's finding regarding the date from which benefits commence.

On remand, the administrative law judge found that, although the x-ray evidence established the presence of large opacities as required under 20 C.F.R. §718.304(a), the CT scans and medical opinions "negate[d] invocation" of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant initially asserts that, having determined that the x-ray evidence supports the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a), the administrative law judge erred in weighing the x-rays against the CT scan and medical opinion evidence relevant to 20 C.F.R. §718.304(c). Claimant further asserts that the administrative law judge erred in his analysis of the CT scans and medical opinions in finding that claimant failed to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits. On cross-appeal, employer also challenges the administrative law judge's weighing of the x-ray evidence, pursuant to 20 C.F.R. §718.304(a). Claimant responds, urging the Board to reject employer's assertions raised on cross-appeal. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

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. 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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Where 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

[3] The record reflects that Drs. Repsher and Rosenberg are Board-certified in Internal Medicine and Pulmonary Disease, Employer's Exhibits 6, 8, while Dr. Ranavaya is Board-certified in Preventive Medicine with a subspecialty in Occupational Medicine. Employer's Exhibit 1 at 4. Additionally, Drs. Ranavaya, Repsher, and Rosenberg are all B readers. Employer's Exhibits 1, 6, 8.

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(d); *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(d)(2). The administrative law judge determined that claimant's prior claim was denied because he did not establish total disability. Decision and Order at 2, 6. Consequently, claimant had to submit new evidence establishing that he is totally disabled to obtain review of the merits of his claim. 20 C.F.R. §725.309(d)(2),(d)(3). The administrative law judge found that the new evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), and that therefore, the only avenue left for claimant was to establish that the irrebuttable presumption of 20 C.F.R. §718.304 applied. *See* 20 C.F.R. §718.204(b)(1).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, 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 or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, is a condition that would yield results equivalent to (A) or (B). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.[4] The introduction of legally sufficient evidence of complicated

[4] Section 718.304 provides in relevant part:

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis . . . if such miner is suffering . . . from a chronic dust disease of the lung which:

> (a) When diagnosed by chest X-ray . . . yields one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C . . .; or
>
> (b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung; or
>
> (c) When diagnosed by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnosis been made as therein described: *Provided, however,* That any diagnosis made under this paragraph shall accord with acceptable medical procedures.

pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption. 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 conflict, and make a finding of fact. *See Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256, 22 BLR 2-93, 2-101 (4th Cir. 2000); *Lester v. Director, OWCP*, 993 F.2d 1143, 1145, 17 BLR 2-114, 2-117 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991)(*en banc*).

Initially, we address employer's contention, raised on cross-appeal, that the administrative law judge erred in his evaluation of the x-ray evidence pursuant to 20 C.F.R. §718.304(a). Specifically, employer contends that administrative law judge mechanically relied on the qualifications of the interpreting physicians in evaluating the conflicting readings of the April 18, 2005 x-ray, and failed to "fully consider" Dr. Rosenberg's explanation regarding his reading of this x-ray. Employer's Brief at 11-12. Employer's assertions lack merit.

In finding that the x-ray evidence supported the existence of complicated pneumoconiosis, the administrative law judge considered six readings of three new x-rays.[5] Decision and Order on Remand at 3. Dr. Alexander, a Board-certified radiologist and B reader, and Dr. Ranavaya, a B reader, read the October 4, 2004 x-ray as positive for both simple pneumoconiosis and Category "A" large opacities.[6] Director's Exhibit 16; Claimant's Exhibit 1. Dr. Scott, a Board-certified radiologist and B reader, read the same x-ray as negative for both simple and complicated pneumoconiosis. Employer's Exhibit 9. The administrative law judge found this x-ray to be positive, based on the preponderance of the readings by highly qualified readers. *Adkins v. Director, OWCP*, 958 F.2d 49, 52, 16 BLR 2-61, 2-66 (4th Cir. 1992); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-65 (2004)(*en banc*); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc on recon.*); Decision and Order on Remand at 3. Employer raises no challenge to the administrative law judge's consideration of the October 4, 2004 x-ray. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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20 C.F.R. §718.304.

[5] The administrative law judge previously found that a reading of a fourth x-ray, dated January 7, 1992 and submitted by employer, was irrelevant under 20 C.F.R. §725.309(d), because it predated the denial of the miner's prior claim. Decision and Order at 7.

[6] Dr. Binns, a Board-certified radiologist and B reader, interpreted the October 4, 2004 x-ray for its film quality only. Employer's Exhibit 9.

Regarding the April 18, 2005 x-ray, the administrative law judge properly found that Dr. Alexander read the x-ray as positive for simple pneumoconiosis and Category A large opacities. Claimant's Exhibit 2. The administrative law judge further found that while Dr. Rosenberg, a B reader, read the same x-ray as positive for simple pneumoconiosis, and noted Category B large opacities, Employer's Exhibit 4, Dr. Rosenberg subsequently explained that the character and distribution of the opacities were not consistent with pneumoconiosis.[7] Contrary to employer's arguments, in consideration of Dr. Rosenberg's comments, the administrative law judge properly concluded that Dr. Rosenberg's reading of the April 18, 2005 x-ray "must be construed as negative for simple and complicated pneumoconiosis." Decision and Order on Remand at 3. Weighing Dr. Rosenberg's negative B reading against Dr. Alexander's positive, dually qualified reading of the same x-ray, the administrative law judge permissibly concluded that the April 18, 2005 x-ray was positive, based on Dr. Alexander's superior radiological qualifications. *Adkins*, 958 F.2d at 52, 16 BLR at 2-66; *Dempsey*, 23 BLR at 1-65; *Cranor*, 22 BLR at 1-7; Decision and Order on Remand at 3.

Thus, contrary to employer's contentions, the administrative law judge properly considered both the quantity and the quality of the x-ray readings, together with Dr. Rosenberg's comments about the character of the large opacity he saw. In addition, the administrative law judge acted within his discretion in finding that the preponderance of the probative x-ray readings was positive for the presence of large opacities of complicated pneumoconiosis. *Adkins*, 958 F.2d at 52, 16 BLR at 2-66; *Dempsey*, 23 BLR at 1-65; *Cranor*, 22 BLR at 1-7; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994); Decision and Order on Remand at 3. We, therefore, affirm the administrative law judge's determination that the x-ray evidence supports invocation of the interim presumption pursuant to 20 C.F.R. §718.304(a).

Turning to the arguments raised by claimant on appeal, we initially reject claimant's contention that, having determined that the x-ray evidence supports the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a), the administrative law judge erred in weighing the x-rays against the CT scan and medical opinion evidence relevant to 20 C.F.R. §718.304(c). Contrary to claimant's assertion, the United States Court of Appeals for the Fourth Circuit has held that even where the x-ray evidence includes opacities that would satisfy the requirements of 20 C.F.R. §718.304(a), if evidence is available that is relevant to an analysis under 20 C.F.R.§718.304(c), all of

[7] In a May 3, 2005 narrative report accompanying the April 18, 2005 x-ray report, Dr. Rosenberg stated that the changes he recorded as Category B on the x-ray form "clearly" were "not consistent with the presence of [coal workers' pneumoconiosis]," based on their distribution and character. Employer's Exhibit 4 at 5.

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. *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101. Thus, the administrative law judge properly weighed the x-ray evidence at 20 C.F.R. §718.304(a) together with the CT scans and medical opinions at 20 C.F.R. §718.304(c), prior to determining whether claimant established a change in an applicable condition of entitlement.

We next address claimant's contention that the administrative law judge erred in his evaluation of the CT scan evidence, pursuant to 20 C.F.R. §718.304(c). Specifically, claimant asserts that the administrative law judge failed to explain his finding that the preponderance of the CT scan evidence does not demonstrate the existence of complicated pneumoconiosis, in light of the radiological qualifications of the readers. We agree.

Pursuant to 20 C.F.R. §718.304(c), the administrative law judge considered four readings of three new CT scans. The administrative law judge noted, correctly, that Dr. Repsher, a B reader, read the June 30, 2004 CT scan as showing a pattern "classic for pulmonary sarcoidosis and extraordinarily atypical for medical [coal workers' pneumoconiosis]." Employer's Exhibit 4 at 14-16. The administrative law judge noted further that Dr. Alexander interpreted the April 18, 2005 CT scan as positive for complicated pneumoconiosis, but Dr. Rosenberg read the same scan as negative for both simple and complicated pneumoconiosis. Claimant's Exhibit 3; Employer's Exhibit 5. Finally, the administrative law judge noted that Dr. Valiveti, a physician with unknown radiological qualifications, reported that the November 17, 2004 CT scan showed changes that "may be related to pneumoconiosis," but stated that possible malignancy could not be excluded. Claimant's Exhibit 4. After discounting Dr. Valiveti's opinion as "too indefinite to support a finding of complicated pneumoconiosis," the administrative law judge concluded that the preponderance of the remaining readings failed to demonstrate the presence of the disease. Decision and Order on Remand at 4.

As claimant notes, when the administrative law judge evaluated the conflicting x-ray readings at 20 C.F.R. §718.304(a), he accorded greater weight to Dr. Alexander's positive reading of the April 18, 2005 x-ray than to Dr. Rosenberg's negative reading of the same x-ray, based on Dr. Alexander's superior radiological qualifications. Decision and Order on Remand at 3. However, as claimant argues, when the administrative law judge evaluated the conflicting readings of the April 18, 2005 CT scan, he did not explain why he did not similarly accord greater weight to Dr. Alexander's positive reading of the April 18, 2005 CT scan, than to Dr. Rosenberg's negative reading of the same scan. Claimant's Brief at 18-19. The administrative law judge must sufficiently discuss the evidence and his reasons for crediting it or discrediting it, pursuant to the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into

the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a). *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997). Because the administrative law judge did not explain the basis for his inconsistent approach to the physicians' relative radiological qualifications, we vacate the administrative law judge's finding that the CT scan evidence does not establish the existence of complicated pneumoconiosis. On remand, the administrative law judge must reevaluate the CT scan evidence in light of the readers' qualifications, and explain his determinations to credit or discredit their interpretations. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *see also Adkins*, 958 F.2d at 52, 16 BLR at 2-66 (stating that "counting heads" is a "hollow" way to resolve conflicts in the evidence).

Finally, we address claimant's contention that the administrative law judge erred in his evaluation of the medical opinion evidence pursuant to 20 C.F.R. §718.304(c). Claimant's Brief at 20. Claimant asserts that he administrative law judge erred in crediting the opinions of Drs. Rosenberg and Repsher, that claimant does not have complicated pneumoconiosis, over the contrary opinion of Dr. Ranavaya.

In considering the medical opinions, the administrative law judge initially found that, contrary to his prior findings, and consistent with the holdings of the Board, the opinions of Drs. Rosenberg[8] and Repsher[9] were not equivocal in concluding that claimant

[8] Dr. Rosenberg examined and tested claimant and diagnosed an "interstitial process with large opacity formation" that was not progressive massive fibrosis or coal workers' pneumoconiosis. Employer's Exhibit 4 at 5-6. Dr. Rosenberg advised that a tissue sample be obtained to "establish a definitive diagnosis . . . . [D]epending on what is found (sarcoidosis, vasculitis, lymphoma, infection, etc.), clearly intervention with various therapeutic modalities would be available." Employer's Exhibit 4 at 6. When deposed, Dr. Rosenberg testified that claimant does not have x-ray or computerized tomography [CT] scan findings of simple or complicated pneumoconiosis, but has a pattern "most consistent with . . . sarcoidosis, which is inflammation . . . in the lungs of a granulomatous process." Employer's Exhibit 11 at 15. Based on claimant's overall clinical picture, Dr. Rosenberg concluded it was more likely than not that claimant has sarcoidosis. *Id.* at 17.

[9] Dr. Repsher reviewed the medical evidence and diagnosed claimant with "[c]lassic pulmonary sarcoidosis, both radiographically and physiologically." Employer's Exhibit 7 at 3. Dr. Repsher testified that the location and pattern of claimant's marked lung abnormalities, in the absence of any impairment, was "absolutely classic" for pulmonary sarcoidosis, and he concluded "to an overwhelming probability" that claimant has sarcoidosis. Employer's Exhibit 14 at 25, 26.

does not have complicated pneumoconiosis, but instead were documented and well-reasoned. Decision and Order on Remand at 4. The administrative law judge accorded less weight to Dr. Ranavaya's contrary opinion,[10] based on his lesser qualifications, and because he found Dr. Ranavaya's opinion to be equivocal. Specifically, the administrative law judge found that "[a]lthough Dr. Ranavaya ultimately concluded that the miner more likely than not has complicated pneumoconiosis, he stated that the October 4, 2004 x-ray could be consistent with other diseases such as sarcoidosis, and that the location of the miner's lung disease . . . was atypical for simple and complicated pneumoconiosis." Decision and Order on Remand at 4. Thus, the administrative law judge concluded that the medical opinion evidence did not support invocation of the irrebuttable presumption pursuant to 20 C.F.R. 718.304(c).

Contrary to claimant's arguments, the administrative law judge was not required to discredit the opinions of Drs. Rosenberg and Repsher because they were based, in part, upon the physicians' own conclusions that the x-ray readings do not show the presence of complicated pneumoconiosis, inconsistent with the administrative law judge's findings.[11] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-174 (4th Cir. 2000)(holding that a physician's opinion diagnosing pneumoconiosis based *solely* on discredited x-ray evidence is not probative evidence of pneumoconiosis); Claimant's Brief at 20. However, an administrative law judge should consider such a discrepancy. *See Akers*, 131 F.3d at 441, 21 BLR at 2-274. In light of our determination to remand

[10] Dr. Ranavaya examined and tested claimant and diagnosed complicated pneumoconiosis. Director's Exhibit 16. Dr. Ranavaya later testified that although the pattern of claimant's lung disease was atypical for coal workers' pneumoconiosis or progressive massive fibrosis, it was more likely than not that claimant has complicated pneumoconiosis. Employer's Exhibit 1 at 10-17. He explained that while the appearance of the lesions on x-ray was consistent with complicated pneumoconiosis, he felt it was "prudent" and "wise" to rule out other possible diagnoses, and recommended further testing. Employer's Exhibit 1 at 11-12. Dr. Ranavaya explained that a bronchoscopy was subsequently performed, that did not reveal any endobronchial lesions, or other pathology that could support an alternative diagnosis. Employer's Exhibit 1 at 14-15. Dr. Ranavaya thus concluded that claimant's diagnosis, "more probably than not," was complicated pneumoconiosis. Employer's Exhibit 1 at 16.

[11] Drs. Rosenberg and Repsher based their opinions, in part, upon Dr. Rosenberg's interpretation of claimant's April 18, 2005 x-ray. Employer's Exhibits 4, 7. As set forth above, the administrative law judge found Dr. Rosenberg's negative reading outweighed by the positive reading of Dr. Alexander, based on his superior qualifications as a B reader and Board-certified radiologist. Decision and Order on Remand at 3; Claimant's Exhibit 2.

this case for further consideration of the CT scan evidence, on remand, the administrative law judge should consider whether Dr. Alexander's positive reading of the April 18, 2005 x-ray that Drs. Rosenberg and Repsher relied upon in concluding that claimant does not have complicated pneumoconiosis, calls into question the reliability of the physicians' conclusions. *See Akers*, 131 F.3d at 441, 21 BLR at 2-274; *Winters v. Director, OWCP*, 6 BLR 1-877 (1984); *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); *White v. Director, OWCP*, 6 BLR 1-368 (1983).

Regarding the administrative law judge's determination that Dr. Ranavaya's opinion was equivocal as to the existence of complicated pneumoconiosis, while a physician's opinion that is qualified or equivocal may properly be discredited by an administrative law judge, on remand the administrative law judge should consider, as claimant contends, whether Dr. Ranavaya was simply expressing his opinion in cautious, but affirmative terms. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366, 23 BLR 2-374, 2-386 (4th Cir. 2006); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763, 21 BLR 2-587, 2-605 (4th Cir. 1999)(recognizing that a physician's use of cautious language is not necessarily equivocation); Director's Exhibit 16, Employer's Exhibit 1 at 10-17. Thus, on remand, the administrative law judge should reconsider the opinions of Drs. Rosenberg, Repsher, and Ranavaya, in light of the physicians' qualifications and the quality of their reasoning and documentation.

After weighing the CT scans and medical opinions, the administrative law judge should weigh all the relevant new evidence together to determine whether claimant has established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and, therefore, has established a change in an applicable condition of entitlement. *See Scarbro*, 220 F.3d at 256, 22 BLR at 2-101; *Lester*, 993 F.2d at 1145, 17 BLR at 2-117; *Melnick*, 16 BLR at 1-33. If the administrative law judge, on remand, finds that the new evidence establishes a change in an applicable condition of entitlement, he must determine whether all of the evidence establishes claimant's entitlement to benefits.

Accordingly, the administrative law judge's Decision and Order on Remand – 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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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