BRB No. 06-0397 BLA

CRATE WILLIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED: 03/28/2007
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Mary Z. Natkin and Elizabeth C. Beck (Washington and Lee University School of Law Legal Clinic), Lexington, Virginia, for claimant.

Kathy L. Snyder and Douglas A. Smoot (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Jeffrey S. Goldberg (Jonathan L. Snare, Acting Solicitor of Labor; Rae Ellen Frank James, Deputy 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: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

SMITH, Administrative Appeals Judge:

Employer appeals the Decision and Order - Awarding Benefits (03-BLA-6684) of Administrative Law Judge Richard A. Morgan 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] The administrative law judge credited claimant with thirty-six years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge acknowledged that employer conceded that claimant has a totally disabling respiratory impairment. Consequently, the administrative law judge found the newly submitted evidence sufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. On the merits, the administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). In addition, the administrative law judge found the evidence sufficient to establish the presence of complicated pneumoconiosis and thereby sufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's application of the evidentiary limitations set forth in 20 C.F.R. §725.414 in excluding the reports of several physicians. Employer also challenges the administrative law judge's finding that the evidence is sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a) and (c). Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response in a letter, urging the Board to reject employer's contention that the evidentiary limitations set forth in 20 C.F.R. §725.414 are invalid.[2]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are

[1] Claimant filed his first claim on July 22, 1985. Director's Exhibit 1. A Department of Labor claims examiner denied this claim on January 2, 1986 because the evidence did not show that claimant had pneumoconiosis, that the disease was caused at least in part by coal mine work and that claimant was totally disabled by the disease. *Id*. Although he requested a hearing, claimant did not appear for the hearing scheduled before Administrative Law Judge John H. Bedford on September 21, 1988. *Id*. On November 23, 1988, Judge Bedford issued an order dismissing the 1985 claim on the ground that claimant did not show good cause for his failure to attend the 1988 hearing. *Id*. No further action was taken on that claim. Claimant filed the most recent claim on April 19, 2002. Director's Exhibit 3.

[2] Because the administrative law judge's length of coal mine employment finding and his findings pursuant to 20 C.F.R. §§725.309, 718.202(a), 718.203(b) and 718.304(b) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, we will address employer's contention that the administrative law judge erred in applying the evidentiary limitations set forth in 20 C.F.R. §725.414 in excluding the reports of several physicians. Employer asserts that the reports that the administrative law judge excluded are admissible because they are relevant evidence in this case. Employer's assertion is based on the premise that the evidentiary limitations set forth in the pertinent amended regulation are invalid because they violate Section 923(b) of the Act, Section 556(d) of the Administrative Procedure Act, the decision of the United States Supreme Court in *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988), and the decision of the United States Court of Appeals for the Fourth Circuit in *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997). The Board has rejected these arguments and held that Section 725.414 is a valid regulation. *Ward v. Consolidation Coal Co.*, 23 BLR 1-151 (2006); *see also Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004) *(en banc)*. Furthermore, the Fourth Circuit, within whose jurisdiction this case arises, has recently upheld the validity of the regulations. *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], F.3d , 2007 WL 678248 (4th Cir. Mar. 7, 2007). Thus, we reject employer's contention that the administrative law judge erred in applying the evidentiary limitations set forth in 20 C.F.R. §725.414 in excluding the reports of several physicians.

Next, we address employer's contentions that the administrative law judge erred in finding the evidence sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a) and (c).[3] 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 or autopsy, 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 automatically qualify a claimant for the irrebuttable presumption found at 20 C.F.R. §718.304. In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304, the administrative law judge must

[3] The administrative law judge properly found that claimant failed to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(b) because there is no autopsy or biopsy evidence in the record. Decision and Order at 19.

weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *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*). Additionally, the Fourth Circuit has held that "[b]ecause prong (A) sets out an entirely objective scientific standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition which is diagnosed by biopsy or autopsy under prong (B), or by other means under prong (C), would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561 (4th Cir. 1999).

Employer contends that the administrative law judge erred in finding the evidence sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a). Employer argues that the administrative law judge applied an erroneous legal standard in finding that a preponderance of the x-ray evidence established the presence of complicated pneumoconiosis. Specifically, employer asserts that the administrative law judge effectively shifted the burden of proof from claimant to employer to establish that the opacities found on the x-rays relied upon by claimant did not arise out of coal dust exposure. We hold that employer's assertions have merit.

The administrative law judge noted that the record consists of twenty interpretations of nine x-rays.[4] However, the administrative law judge focused on the nine most recent x-ray readings from 2002 to 2003 by physicians dually qualified as B readers and Board-certified radiologists. Drs. Alexander and Patel classified the August 26, 2002 x-ray as 1/1 and Category A, Director's Exhibit 10; Claimant's Exhibit 2, while Dr. Wiot read this x-ray as negative for pneumoconiosis, Employer's Exhibit 1. In addition, Dr. Alexander classified the September 8, 2003 x-ray as 1/1 and Category A, Claimant's Exhibit 3, while Drs. Ahmed and Willis classified this x-ray as 1/1 only, Claimant's Exhibits 5, 16. Further, Drs. Wheeler, Wiot and Spitz read the September 8, 2003 x-ray as negative for pneumoconiosis. Employer's Exhibits 6, 7. In considering the

[4] The nine x-rays are dated October 3, 1985, November 18, 1999, August 29, 2001, March 23, 2002, March 26, 2002, March 29, 2002, August 26, 2002, September 8, 2003 and May 17, 2004. The administrative law judge noted that "the chest x-rays taken on [November 18, 1999, August 29, 2001, March 23, 2002, March 26, 2002, March 29, 2002 and May 17, 2004] were taken in a hospital or clinic for the purposes of diagnosing and/or monitoring [c]laimant's acute medical condition and not necessarily for purposes of diagnosing and/or monitoring the presence of pneumoconiosis." Decision and Order at 15.

conflicting x-ray evidence, the administrative law judge found that the readings of Dr. Alexander outweighed the contrary readings of Drs. Ahmed, Willis, Wheeler, Wiot and Spitz, because Dr. Alexander provided persuasive explanations for his findings. Decision and Order at 18. Further, the administrative law judge found that Dr. Alexander's findings are supported by Dr. Patel's opinion. *Id*.

Based upon his characterization of the most recent x-ray readings, the administrative law judge stated that "[t]here is no apparent dispute that there is currently a mass in [c]laimant's right upper lung." Decision and Order at 7. The administrative law judge further stated, however, that "[t]he difference in opinion is the cause of said mass." *Id*. In weighing the x-ray evidence, the administrative law judge discounted the x-ray readings of Drs. Ahmed and Willis because "they did not render an opinion on what the possible cause of the right upper mass could be." *Id*. The administrative law judge also discounted Dr. Wheeler's reading of the September 8, 2003 x-ray, because "his opinion that the masses identified in the miner's lungs were compatible with healed pneumonia and possible healed tuberculosis does not negate its compatibility with complicated pneumoconiosis." Decision and Order at 18. Further, the administrative law judge discounted Dr. Wheeler's x-ray reading because his comment that a small ill defined curved scar was compatible with healed pneumonia and possible healed tuberculosis is inconsistent with the findings of no radiographic manifestations of tuberculosis in Dr. Alexander's medical report and Dr. Crisalli's deposition testimony. *Id*. Moreover, the administrative law judge noted that there was no clinical diagnosis of tuberculosis, sarcoidosis or histoplasmosis in the medical records he reviewed. *Id*.

Drs. Alexander and Crisalli agreed that claimant's pneumonia in 1991 was in the left lower lobe, and not the right upper lobe. *Id*. Similarly, the administrative law judge discounted Dr. Spitz's x-ray reading because his comment that there is a mass showing old granulomatous disease is inconsistent with the absence of a clinical diagnosis of such disease in the medical records reviewed by Dr. Crisalli. *Id*. The administrative law judge additionally discounted Dr. Spitz's negative x-ray reading because he found that it is inconsistent with the more credible x-ray readings that establish the existence of simple pneumoconiosis. *Id*. Furthermore, the administrative law judge discounted Dr. Wiot's negative reading of the August 26, 2002 x-ray because his comment, that there may be a malignancy in the upper right lobe, is inconsistent with the contrary persuasive explanation for a finding of no malignancy in Dr. Alexander's medical report. In addition, the administrative law judge discounted Dr. Wiot's reading of this x-ray because he found that Dr. Alexander's explanation, that it is possible to have large opacities of pneumoconiosis with "little to no" background nodules, is more persuasive than Dr. Wiot's comment that the "lack" of small opacities rules out the possibility of complicated pneumoconiosis. *Id*. Finally, the administrative law judge discounted Dr. Wiot's negative reading of the September 8, 2003 x-ray because he found that Dr. Wiot's

comment, that a mass was due to old granulomatous disease, is inconsistent with the absence of a clinical diagnosis of this disease. *Id*.

In *Scarbro*, the Fourth Circuit court explained that where the x-ray evidence vividly displays the presence of large opacities, medical evidence under another prong of 30 U.S.C. §923(c) can undermine the positive x-rays by affirmatively showing that the opacities are not there or are not what they seem to be. *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101. Consequently, in *Scarbro*, the question was whether evidence under other prongs of 30 U.S.C. §923(c) undermined x-rays that clearly demonstrated large opacities. However, in the instant case, the question before the administrative law judge was whether the x-rays themselves support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). In *Lester*, the Fourth Circuit court emphasized that "claimant retains the burden of proving the existence of the disease" complicated pneumoconiosis. *Lester*, 993 F.3d at 1146, 17 BLR at 2-118.

In this case, the administrative law judge's analysis of the evidence is inconsistent with the Fourth Circuit's holdings in *Lester* and *Scarboro*. The administrative law judge implicitly required employer's medical experts, who read claimant's x-rays as negative for large opacities or any form of pneumoconiosis, to also ascertain a definite etiology for the large opacities, identified by Drs. Alexander and Patel, in order to disprove the existence of complicated pneumoconiosis under Section 718.304(a). The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption at 20 C.F.R. §718.304(a), especially when conflicting x-ray evidence is presented, as in this case. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999). Consequently, we must vacate the administrative law judge's finding that the evidence is sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(a), and remand the case for further consideration of the x-ray evidence. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). On remand, the administrative law judge must consider all relevant factors when evaluating the x-ray evidence, such as the number of x-ray interpretations, the readers' qualifications, the dates of the films and the actual readings. *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

Employer also contends that the administrative law judge erred in finding the evidence sufficient to establish the presence of complicated pneumoconiosis at 20 C.F.R. §718.304(c). Specifically, employer asserts that the administrative law judge shifted the burden of proof from claimant to employer to establish that the large opacities were not due to coal dust exposure. The administrative law judge considered the CT scan interpretations of Goodarzi, Daniel and Wiot, as well as the medical opinions of Drs. Alexander, Haddadin, Mullins, Crisalli and Castle. With regard to the CT scan evidence, Dr. Goodarzi, in a December 27, 1999 CT scan report, noted bilateral and diffuse

interstitial fibrosis that could be due to pneumoconiosis, old healed granulomas/calcifications in both hila and some fibroscarring over the supralateral aspect of the right hemithorax posteriorly. Claimant's Exhibit 15. In a March 19, 2002 CT scan report, Dr. Daniel noted that an area of fibrosis is present in the right upper lobe posterolaterally. Claimant's Exhibit 13. Lastly, in an April 25, 2005 CT scan report, Dr. Wiot opined that there is no evidence of coal workers' pneumoconiosis, but indications of post-inflammatory scarring, based on his review of three CT scans dated March 19, 2002, March 20, 2002 and October 8, 2002. Employer's Exhibit 10.

The administrative law judge discounted Dr. Goodarzi's CT scan interpretation because he found that it did not specifically address the right upper lung mass. Decision and Order at 19. In addition, the administrative law judge discounted Dr. Daniel's CT scan interpretation because he found that it did not identify the cause of the fibrosis in the right upper lobe. *Id*. The administrative law judge also discounted Dr. Wiot's CT scan interpretations because there is no evidence to support his opinion that the scarring in the right upper lobe was caused by a post-inflammatory disease. *Id*.

Regarding the medical reports, Dr. Mullins, in a report dated September 3, 2002, diagnosed coal workers' pneumoconiosis and an unknown lung mass by chest x-ray. Director's Exhibit 10. Dr. Mullins also opined that the right upper lobe lesion may represent pulmonary massive fibrosis. *Id*. In a report dated October 12, 2004, Dr. Haddadin stated that "x-ray shows significant interstitial lung changes classifiable as coal workers' pneumoconiosis as well as a right upper lung coalescence of shadow which can be consistent with a coal dust exposure or can possibly represent a conglomerate type A lesion." Claimant's Exhibit 9. Dr. Haddadin also stated that "[t]hat shadow has been relatively stable [from] the x-ray of November 18, 1999 until the x-ray of June 28, 2004 and that makes the chances that it is a malignant tumor very unlikely and remote." *Id*. Further, in a report dated October 15, 2004, Dr. Alexander opined that "[claimant's] pneumoconiosis has resulted in at least one lesion that is greater than one centimeter in size." Claimant's Exhibit 11. Dr. Alexander specifically stated that "the 25 mm lesion in the right upper zone is classified as a Category A large opacity of complicated [coal workers' pneumoconiosis] under the ILO system."[5] *Id*. In contrast, Dr. Castle, in a report dated December 9, 2003, opined that claimant does not have coal workers' pneumoconiosis. Employer's Exhibit 5. Similarly, in a report dated October 28, 2003,

[5] Dr. Alexander additionally stated, "[w]e can exclude tuberculosis because there are no other radiographic manifestations of tuberculosis in the chest, and there is no mention of tuberculosis in any of these notes." Claimant's Exhibit 11. Moreover, Dr. Alexander concluded that lung cancer is very unlikely to be the cause of the right upper zone opacity. *Id*.

Dr. Crisalli opined that claimant does not have coal workers' pneumoconiosis or any chronic lung disease caused by coal mine dust exposure. Employer's Exhibit 2.

The administrative law judge found that Dr. Alexander's opinion outweighed the opinions of Drs. Mullins, Haddadin, Castle and Crisalli, on the basis that it is better reasoned and supported by the underlying documentation of record.[6] Decision and Order at 19-20. The administrative law judge discounted the opinions of Drs. Mullins and Haddadin because he found that they fall short of the "reasonable degree of medical certainty" standard. *Id*. at 19. In addition, the administrative law judge discounted the opinions of Drs. Castle and Crisalli because he found that they did not render an opinion with regard to the nature of the mass in the right upper lobe. *Id*. at 20. Consequently, based on his reliance upon Dr. Alexander's opinion, the administrative law judge found the evidence sufficient to establish the presence of complicated pneumoconiosis at Section 718.304(c).

We hold that employer's contention that the administrative law judge shifted the burden of proof from claimant to employer to establish that the large opacities were not due to coal dust exposure has merit. *Lester*, 993 F.3d at 1146, 17 BLR at 2-118; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101. Like his analysis of the x-ray evidence, the administrative law judge's analysis of the CT scan and medical opinion evidence is inconsistent with the Fourth Circuit's holdings in *Lester* and *Scarboro*. *Id*. The administrative law judge implicitly required employer's medical experts to ascertain a definite etiology for the mass in claimant's right upper lobe. Decision and Order at 19-20. Furthermore, the administrative law judge's analysis of the medical evidence under Section 718.304(c) was affected by his improper consideration of the conflicting x-ray evidence at Section 718.304(a). *Lester*, 993 F.3d at 1146, 17 BLR at 2-118; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101. Thus, we vacate the administrative law judge's finding that the evidence is sufficient to establish the presence of complicated pneumoconiosis at Section 718.304(c) and remand the case for further consideration of the evidence. On remand, the administrative law judge must explicitly perform an equivalency determination with regard to the medical evidence at Section 718.304(c) to determine whether any physician indicated that claimant has a condition that would equate to opacities of at least one centimeter on x-ray. *Scarboro*, 220 F.3d at 256, 22 BLR at 2-101.

[6] The administrative law judge stated that Dr. Alexander's opinion is "consistent with [c]laimant's treatment records, medical history, chest x-ray evidence that showed the presence of pneumoconiosis, [c]laimant's history of coal mine employment, physical examinations, and subjective complaints." Decision and Order at 19-20.

In sum, on remand, the administrative law judge must first determine whether the relevant evidence in each category under Section 718.304(a), (c) tends to establish the presence of complicated pneumoconiosis, and then he must weigh the evidence together before determining whether the evidence is sufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304. *Lester*, 993 F.2d at 1143, 17 BLR at 2-114; *Melnick*, 16 BLR at 1-31.

Accordingly, the administrative law judge's Decision and Order – Awarding Benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinions.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

I concur:

JUDITH S. BOGGS
Administrative Appeals Judge

McGRANERY, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to vacate the administrative law judge's award of benefits, and remand the case for further consideration of the evidence. I believe that the majority's decision is based on a misreading of the administrative law judge's decision. The majority holds that the administrative law judge erred in his consideration of the evidence pursuant to 20 C.F.R. §718.304 because the majority construes his opinion as requiring employer to prove the etiology of the opacities identified on the x-ray findings, as well as the opacities and/or masses identified on the CT scans and medical opinions. That is not my understanding of his opinion. In considering the medical evidence at Section 718.304, the administrative law judge observed that "[t]here is no apparent dispute that there is currently a mass in [c]laimant's right upper lung." Decision and Order at 17. The administrative law judge stated that "[t]he difference in opinion is the cause of said mass." *Id*. Drs. Alexander and Patel found that the large opacities seen on x-rays were due to coal dust exposure. Although Drs. Wiot, Wheeler and Spitz, employer's physicians, determined that the x-rays did not show pneumoconiosis, they were uncertain about the etiology of the opacities. Drs.

Wiot, Wheeler and Spitz suggested the possibility of healed pneumonia, tuberculosis, granulomatous disease or malignancy. Review of the record shows that the administrative law judge properly considered and resolved the conflicts in the x-ray, CT scan and medical opinion evidence.

The case at bar arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit which has declared:

> the findings of an administrative law judge may not be disregarded on the basis that other inferences might have been more reasonable. Deference must be given the fact-finder's inference and credibility assessments, and we have emphasized the scope of review of ALJ findings is limited. *Newport News Shipbldg. & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988).

Newport News Shipbldg. & Dry Dock Co. v. Cherry, 326 F.3d 449, 452, 37 BRBS 6, 8 (CRT) (4th Cir. 2003). The court has also observed that it is within the administrative law judge's discretion to determine whether a miner is suffering from complicated pneumoconiosis as long as his decision is rational and based on substantial evidence. *See Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997). In addition, the court has observed that it is the province of the administrative law judge to make credibility determinations and to resolve inconsistencies or conflicts in the evidence. *Underwood*, 105 F.3d 946, 21 BLR 2-23.

In *Yogi Mining Co. v. Fife*, 159 Fed.Appx. 441, slip op. at 7-8 (4th Cir., Dec. 7, 2005)(unpub.), the Fourth Circuit recognized that the administrative law judge acted within his discretion in discounting the opinions of employer's doctors because they were equivocal or failed to explain contrary data adequately. In the instant case, contrary to employer's contention and the majority's opinion, the administrative law judge did not require employer's physicians to prove the etiology of the large opacities and masses observed on x-rays, CT scans and medical opinions. Rather, the administrative law judge considered the reasoning and documentation supporting the medical opinions and ultimately found more credible those opinions that were consistent with the other evidence in the record.

The administrative law judge reasonably found more credible the opinions of Dr. Alexander, that related the large masses seen on x-rays to claimant's thirty-six years of coal dust exposure, than the contrary opinions of employer's physicians. The administrative law judge set forth his reasons for crediting Dr. Alexander's finding of complicated pneumoconiosis, stating that:

> [Dr. Alexander] clearly explained the following basis for his conclusion that the right upper lobe lesion was caused by pulmonary massive fibrosis (PMF): there was a background of simple pneumoconiosis, the radiographic appearance and location was characteristic for complicated pneumoconiosis, and that the natural progression of CWP was consistent with the chest x-rays. He persuasively explained why the profusion of small opacities may have decreased over time. In addition, he noted that the presence of the 1 cm lesion was confirmed by CT scan in 2002 and that there was no other medical reasonable explanation for the right upper lung zone opacity. I agree. Moreover, the 8- 26-02 x-ray interpretation by Dr. Patel supports the opinion of Dr. Alexander.

Decision and Order at 18.

The administrative law judge determined that the medical evidence of record undermined the credibility of employer's physicians suggesting that the large masses seen on x-rays were possibly tuberculosis, a malignancy, pneumonia or granulomatous disease. Decision and Order at 18. The administrative law judge noted that Dr. Alexander "convincingly explained that tuberculosis could be eliminated because there were no radiographic manifestations of tuberculosis in the chest." *Id*. The administrative law judge also observed that Dr. Crisalli testified that claimant's medical records revealed no clinical diagnosis of tuberculosis, sarcoidosis or histoplasmosis. *Id*. Furthermore, the administrative law judge found the possibility of lung cancer was unlikely because, as Dr. Alexander had explained, "there were no pleural effusions associated with malignancy and [as both Drs. Alexander and Crisalli had explained] the stability of the density from 2002 to 2003 favored a chronic fibrotic process over a malignant one." *Id*. The administrative law judge similarly doubted the identification of the mass in claimant's right upper lung as healed pneumonia in light of evidence from both Drs. Alexander and Crisalli that claimant's pneumonia had been confined to his left lower lobe. *Id*. Lastly, the administrative law judge was unpersuaded by identification of the mass in claimant's lung as old granulomatous disease since it lacked any corroboration in claimant's extensive medical records. *Id*.

In sum, review of the administrative law judge's decision reveals that he carefully analyzed all of the medical evidence and determined that the diagnosis of complicated pneumoconiosis was the best explained and the most consistent with the record in this case: claimant's history of coal workers' pneumoconiosis, respiratory illness and thirty-six years of coal dust exposure. The administrative law judge properly considered employer's medical evidence and found its credibility undermined because it was contradicted by evidence of record or lacked any corroboration in the record.

Employer's contention that the administrative law judge shifted the burden of proof to employer to prove that claimant does not have complicated pneumoconiosis is simply a diversionary tactic. Employer makes the assertion that the administrative law judge's analysis was improper because employer recognizes that its evidence was unable to withstand the judge's scrutiny. When employer's doctors opined that claimant does not have complicated pneumoconiosis, they buttressed their opinions with an explanation for the abnormalities revealed on x-rays and CT scans. The administrative law judge reasonably determined that the credibility of these opinions was undermined by his finding that all of these explanations were extremely doubtful when considered in light of the record. The judge's reasoning was sound: if the doctor's opinions are shown to be unreliable when they opine on what the mass is, there is good reason to believe they are also unreliable when they say what the mass is not.

The administrative law judges analysis in the instant case is substantially similar to that of the administrative law judge in *Fife* who, the Fourth Circuit held, properly credited Dr. Alexander's opinion finding complicated pneumoconiosis and properly discounted the opinions of all of employer's doctors for equivocation and failure to explain contrary data. Because the administrative law judge properly discharged his responsibility to resolve the conflicts in the medical evidence, his credibility determinations should be upheld. *Underwood*, 105 F.3d at 949, 21 BLR at 2-28. Substantial evidence supports his determination that the evidence is sufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, I would affirm the administrative law judge's decision awarding benefits.

REGINA C. McGRANERY
Administrative Appeals Judge