BRB No. 08-0395 BLA

L.B.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SILVER RIVER COALS, INCORPORATED	)	
	)	DATE ISSUED: 03/30/2009
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
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 Linda S. Chapman, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Wendy G. Adkins (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2007-BLA-5111) of Administrative Law Judge Linda S. Chapman rendered on a subsequent claim[1] 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). The administrative law judge credited claimant with twenty-two years of coal mine employment and adjudicated this claim under the regulations at 20 C.F.R. Part 718. The administrative law judge determined that the newly submitted evidence established the existence of complicated pneumoconiosis and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §§718.202(a)(3), 718.304, 725.309. Reviewing the record evidence as to the merits of claimant's entitlement, the administrative law judge found that claimant established the existence of complicated pneumoconiosis arising out of coal mine employment pursuant to Sections 718.202(a)(3), 718.304, 718.203(b), which afforded him the irrebuttable presumption of total disability due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant is entitled to the irrebuttable presumption of total disability due to pneumoconiosis. Employer asserts that the administrative law judge improperly shifted the burden to employer to prove that claimant does not have complicated pneumoconiosis pursuant to Section 718.304. Employer contends that the administrative law judge erred by not making separate findings under subsections 718.304(a) and (c), as to whether the x-ray, CT scan and medical opinion evidence establish that claimant has complicated pneumoconiosis, and that she did not properly perform the equivalency analysis required by subsection 718.304(c). Employer further asserts that the administrative law judge erred in failing to explain her credibility findings with respect to the conflicting medical opinions. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief unless specifically requested to do so by the Board.[2]

[1] Claimant filed a prior claim for benefits on November 19, 1998, which was denied by the district director on January 25, 1999, on the grounds that claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant took no action with respect to the denial until he filed his subsequent claim on December 20, 2005. Director's Exhibit 3.

[2] We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings of twenty-two years of coal mine employment, and that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (2), (4).

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.[3] 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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

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 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). In this case, claimant's prior claim was denied because he failed to establish any of the requisite elements of entitlement. Director's Exhibit 1. Consequently, claimant was required to submit new evidence establishing at least one of the elements of entitlement in order to obtain review of the merits of his subsequent claim. 20 C.F.R. §725.309(d)(2),(3).

In the present case, the administrative law judge determined that claimant established a change in an applicable condition of entitlement by establishing invocation of the irrebuttable presumption of total disability due to pneumoconiosis. Decision and Order at 15. Section 411(c)(3) of the Act, as implemented by Section 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 which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director's Exhibit 6.

Employer challenges the administrative law judge's finding that claimant is entitled to the irrebuttable presumption. Employer argues that the administrative law judge applied an incorrect legal standard in analyzing the x-ray, CT scan, and medical opinion evidence for complicated pneumoconiosis, and that she improperly shifted the burden to employer to prove that abnormalities demonstrated on claimant's x-rays did not arise out of coal dust exposure, contrary to the holding in *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256, 22 BLR 2-93, 2-101 (4th Cir. 2000). Employer's arguments have merit.

In *Scarbro*, the United States Court of Appeals for the Fourth Circuit held that a single piece of relevant evidence could support an administrative law judge's finding that the irrebuttable presumption was successfully invoked "if that piece of evidence outweighs conflicting evidence in the record." *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101. The court further explained:

> Thus, even where some x-ray evidence indicates opacities that would satisfy the requirements of prong (A), if other x-ray evidence is available or if evidence is available that is relevant to an analysis under prong (B) or prong (C), then all of the evidence must be considered and evaluated to determine whether the evidence as a whole indicates a condition of such severity that it would produce opacities greater than one centimeter in diameter on an x-ray.

Scarbro, 220 F.3d at 256, 22 BLR at 2-101 (citation omitted).

In this case, the administrative law judge prefaced her consideration of the evidence at Section 718.304 by citing to a specific excerpt from *Scarbro*, which states:

> Of course, if the x-ray evidence vividly displays opacities exceeding one centimeter, its probative force is not reduced because the evidence under some other prong is inconclusive or less vivid. Instead, the x-ray evidence can lose force *only if other evidence affirmatively shows* that the opacities are not there or are not what they seem to be, perhaps because of an intervening pathology, some technical problem with the equipment used, or incompetence of the reader.

Decision and Order at 12, citing *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101 (emphasis added by the administrative law judge). The administrative law judge then described the parties' burden of proof as follows:

> In addition to establishing the existence of a one centimeter or greater opacity, [Section] 718.304 requires that the etiology of these opacities be coal-dust related. Under *Scarbro*, once the [c]laimant establishes this

> etiology, the [e]mployer must provide evidence that affirmatively shows the opacities are not there or that they are from a disease process other than complicated pneumoconiosis.

Decision and Order at 12.

Pursuant to Section 718.304, the administrative law judge found that "every physician who has reviewed x-rays or CT scans, or [claimant's] records has concluded that he has large masses in both of his lungs." *Id*. The administrative law judge concluded that claimant established "by the overwhelming preponderance of the newly submitted medical evidence that he has a process in his lungs that shows on x-ray as opacities of at least one centimeter in diameter." *Id*. at 13. The administrative law judge then considered the etiology of the masses, noting that Drs. Alexander, Rasmussen and DePonte diagnosed the masses as Category B opacities of complicated pneumoconiosis, while Drs. Wheeler and Rephser opined that the masses were not complicated pneumoconiosis. *Id*. The administrative law judge determined that the opinions of Drs. Wheeler and Repsher were speculative and failed to establish that claimant does not have complicated pneumoconiosis. *Id*. The administrative law judge then summarily stated:

> Weighing all of [the] evidence together, I find that [claimant] has established that he has pneumoconiosis, which arose from his coal mine employment. Further, I find that [claimant] has established by a preponderance of the reliable medical evidence that he has a disease process in his lungs that appears on x-ray as [C]ategory B opacities of pneumoconiosis. Employer has not offered affirmative evidence to establish either that this disease process is not there, or that it is due to a cause other than exposure to coal dust.

Id. at 15.

We agree with employer that the administrative law judge improperly shifted the burden of proof to employer to provide affirmative evidence that claimant does not have complicated pneumoconiosis. Contrary to the administrative law judge's analysis, the court in *Scarbro* held that where the x-ray evidence "*vividly displays*" the presence of large opacities as defined in prong (A), this evidence "only loses force" if the other types of medical evidence described in Section 921(c)(3) of the Act affirmatively show "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 (emphasis added). In this case, the administrative law judge erred in concluding that once claimant submitted some evidence supporting a finding of complicated pneumoconiosis by x-ray or CT scan, employer was required to present affirmative evidence to establish either the absence of the large opacities or that they were not related to pneumoconiosis or coal dust exposure. The particular language in

Scarbro that was cited by the administrative law judge, was used by the Fourth Circuit court only in reference to situations where the x-ray evidence "vividly displays opacities exceeding one centimeter," *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101, unlike the present case, where the x-ray evidence is in conflict as to whether claimant has any large or small opacities of pneumoconiosis.[4] Therefore, we conclude that the administrative law judge erred in her application of *Scarbro*.[5]

Employer further contends that because claimant bears the burden of proof, the administrative law judge erred by not making specific credibility findings with respect to the x-ray, CT scan and medical opinion evidence under subsections 718.304(a) and (c), and that she failed to consider the equivalency requirements at subsection 718.304(c) in evaluating whether claimant established the existence of complicated pneumoconiosis. We agree. The administrative law judge's analysis fails to comport with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2),[6] because she made no credibility determinations with respect to claimant's evidence and failed to make specific findings under the distinct provisions of subsections 718.304(a) and (c) as to whether claimant satisfied his burden of proving the existence of complicated pneumoconiosis based on the x-ray, CT scan or medical opinion evidence. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Furthermore, the administrative law judge erred in failing to specifically address whether the CT scans and

[4] The administrative law judge did not render any findings under 20 C.F.R. §718.304(a) as to how she resolved the conflict among the x-ray readings for Category B opacities and those readings indicating that claimant had no large opacities for pneumoconiosis.

[5] In an unpublished case issued by the Fourth Circuit, the court specifically rejected the analysis employed by the administrative law judge with regard to *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256, 22 BLR 2-93, 2-101 (4th Cir. 2000), stating that "*Scarbro* holds only that once the claimant presents legally sufficient evidence (here, x-ray evidence of large opacities classified as [C]ategory A, B, or C in the ILO system), he is likely to win unless there is contrary evidence . . . in the record." *Clinchfield Coal Co. v. Lambert*, 206 Fed. App'x 252, 255 (4th Cir. Nov. 17, 2006) (unpub.) (citation omitted).

[6] The Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge independently evaluate the evidence and provide an explanation for her findings of fact and conclusions of law.

medical evidence satisfy the equivalency requirements of subsection 718.304(c).[7] *See Perry v. Mynu Coals, Inc*., 469 F.3d 360, 23 BLR 2-374 (4th Cir. 2006).

While Section 718.304 provides an irrebuttable presumption that the miner is totally disabled due to pneumoconiosis, the introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for invocation of the irrebuttable presumption. *See Scarbro*, 220 F.3d at 256, 22 BLR at 2-100; *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (*en banc*). The administrative law judge must first determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis[8] and then must weigh together the evidence at subsections (a), (b), and (c) before determining whether invocation of the irrebuttable presumption pursuant to Section 718.304 has been established. *See Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick*, 16 BLR at 1-33-34. Thus, because the administrative law judge's analysis of the evidence relevant to invocation of the irrebuttable presumption is based on a faulty interpretation of *Scarbro*, and we are unable to discern from the administrative law judge's decision, the weight she accorded the conflicting x-ray, CT scan and medical opinion evidence under subsection 718.304(a) or (c), we are compelled to vacate the award of benefits and remand this case for further consideration. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*).

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[7] Employer also asserts that claimant is unable to satisfy the equivalency requirement of 20 C.F.R. §718.304(c) because the record does not contain a medical opinion that specifically addresses whether the masses identified on claimant's CT scans would correspond to a large opacity for pneumoconiosis when x-rayed. Employer's Brief at 11.

[8] Contrary to the administrative law judge's analysis, complicated pneumoconiosis seen as Category A, B or C opacities on x-ray, is not determined solely by the dimensions of the irregularity. The ILO classification form requires the physician interpreting the x-ray film to first determine whether there are "[a]ny [p]arenchymal [a]bnormalities [c]onsistent with [p]neumoconiosis." Form CM-933, question 2A. If the physician answers in the affirmative, then he/she proceeds to the sections regarding the size of the opacities, *i.e.*, small opacities or large opacities of size A, B, or C. *Id*. However, if the physician answers the question in the negative, then he/she is to skip the section regarding the size of the opacities. *Id*. On remand, the administrative law judge must consider each x-ray interpretation independently and determine whether or not it supports a finding of complicated pneumoconiosis pursuant to Section 718.304(a).

In light of our decision to remand this case, we also address, in the interest of judicial economy, employer's arguments with respect to the administrative law judge's findings regarding Drs. Wheeler and Repsher. Employer contends that the administrative law judge erred in finding the opinions of Drs. Wheeler and Repsher to be speculative as to the existence of complicated pneumoconiosis because they did not provide a definitive diagnosis for the etiology of the masses seen on claimant's x-rays. Decision and Order at 13. We agree. In rejecting the opinions of Drs. Wheeler and Repsher, the administrative law judge did not properly consider that both physicians made an unequivocal diagnosis on the ILO classification form that there were no parenchymal abnormalities consistent with pneumoconiosis on the x-rays they reviewed. Employer's Exhibits 2-5, 8. The mere fact that a physician has not identified a definitive alternate source for the x-ray findings does not undermine a negative x-ray interpretation, since the burden of proof rests with claimant to establish the existence of complicated pneumoconiosis. *Lester*, 993 F.2d at 1146, 17 BLR at 2-118; *see also Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994). Therefore, the administrative law judge erred in according less weight to the opinions of Drs. Wheeler and Repsher on the grounds that they were speculative as to whether claimant's x-ray findings are consistent with complicated pneumoconiosis. *See Lester*, 993 F.2d at 1146.

Employer further contends that the administrative law judge erred in failing to explain why she "discredited the assessments of Drs. Wheeler and Repsher concerning the lack of a background of small rounded nodules weighing against a diagnosis of complicated pneumoconiosis."[9] Employer's Brief at 12. We agree. Dr. Wheeler testified that in order to interpret an x-ray as positive for complicated pneumoconiosis, it was necessary to "see a mass [greater than one] centimeter surrounded by a background nodular pattern of small nodules" typically "r small opacities." Employer's Exhibit 6 at 19-20. Dr. Repsher similarly opined that claimant's x-ray findings were consistent with inactive tuberculosis, as there was heavy calcification and no significant background of small rounded opacities, which "is virtually always found with conglomerate pneumoconiosis." Employer's Exhibit 2.

In rejecting the opinions of Drs. Wheeler and Repsher as to the etiology of claimant's masses, the administrative law judge cited to the fact that neither physician had reviewed the most recent CT scan performed on October 25, 2006, which was read

[9] Employer contends that the administrative law judge erred in failing to reconcile her credibility determinations with her finding that the evidence was insufficient to establish the existence of simple coal worker's pneumoconiosis. Employer's Brief at 12-13. Contrary to employer's contention, however, claimant is not required to first establish the existence of simple pneumoconiosis in order to establish the existence of complicated pneumoconiosis.

by Dr. Valiveti as showing a reticular nodular pattern, with multiple densities in both lobes, consistent with pneumoconiosis and "more prominent than on the October 2005 CT scan." Decision and Order at 14, citing Claimant's Exhibit 3. However, as the interpretation of medical data is for the medical experts, *see Marcum v. Director, OWCP*, 11 BLR 1-23 (1987), it was improper for the administrative law judge to interpret medical tests and thereby substitute her conclusions for those of the physicians. Moreover, the administrative law judge has provided no explanation as to why Dr. Valiveti's interpretation of the October 2006 CT scan is credible and establishes the requisite background of small nodules, in comparison to the evidence reviewed by Drs. Wheeler and Repsher. Therefore, the administrative law judge's credibility determinations with respect to Drs. Wheeler and Repsher fail to comport with the APA.[10] *See Wojtowicz*, 12 BLR at 1-162; *Clark*, 12 BLR at 151.

Additionally, we agree with employer that the administrative law judge erred in concluding that Dr. Wheeler's opinion was "adversely affected by his insistence that pneumoconiosis does not progress after exposure to coal mine dust ends, but 'stops dead' after exposure ceases." Decision and Order at 13; *see* Employer's Brief at 15. Employer asserts that Dr. Wheeler's opinion as to the etiology of claimant's masses is credible since Dr. Wheeler reviewed a series of x-rays and specifically explained why the progression of the masses seen on those films is not consistent with coal dust exposure. Because it is unclear from her decision whether the administrative law judge discredited Dr. Wheeler's opinion as being contrary to the Act, we instruct the administrative law judge on remand to fully explain her credibility determinations with respect to Dr. Wheeler's opinion and her reasons for finding that his opinion on the progressive nature of pneumoconiosis influenced his medical conclusions in this case.[11] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 537, 21 BLR 2-323, 2-343 (4th Cir. 1998).

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[10] Employer correctly asserts that the administrative law judge erred in finding that while "Dr. Repsher's December 6, 2006 report purported to be a review of [claimant's] medical records," the only evidence Dr. Repsher reviewed in preparing his opinion was Dr. Rasmussen's report. Decision and Order at 14. Contrary to the administrative law judge's finding, Dr. Repsher's December 6, 2006 report was based on his review of several x-ray readings, along with Dr. Rasmussen's report. Employer's Exhibit 1. Dr. Repsher prepared a second report based on his examination findings on July 11, 2007. Employer's Exhibit 2.

[11] The administrative law judge made two additional errors with regard to Dr. Wheeler's opinion. Dr. Wheeler opined that claimant's x-ray and CT scan findings were consistent with either cancer or granulomatous disease. Employer's Exhibit 6 at 52-53. Dr. Wheeler explained that tuberculosis and histoplasmosis are forms of granulomatous disease. Employer's Exhibit 32. Insofar as Dr. Wheeler opined that claimant most likely

Finally, we agree with employer that the administrative law judge erred in summarily dismissing Dr. Repsher's opinion that claimant's normal pulmonary function tests and arterial blood gas studies are not indicative of complicated pneumoconiosis. Although the administrative law judge correctly acknowledged that claimant is not required to establish total disability in order to satisfy her burden of proof under Section 718.304, evidence pertaining to the presence or absence of a respiratory impairment may be relevant to determining whether the abnormalities seen on claimant's x-ray are due to complicated pneumoconiosis. *See Mullins Coal Co. v. Director, OWCP*, 484 U.S. 135, 148 (1987); *Usery v. Turner-Elkhorn Mining Co.*, 428 U.S. 1, 7 (1976). Thus, because we are remanding this case for the administrative law judge to weigh together all the relevant evidence in determining whether claimant has established the existence of complicated pneumoconiosis, she must weigh the totality of Dr. Repsher's opinion, as to why claimant does not have complicated pneumoconiosis, in determining whether claimant has met his burden of proof pursuant to Section 718.304. *See Lester*, 993 F.2d at 1143, 17 BLR at 2-114; *Melnick*, 16 BLR at 1-31.

To summarize, we instruct the administrative law judge on remand to reconsider whether claimant has satisfied his burden to establish that he has complicated pneumoconiosis. The administrative law judge must first determine whether the evidence in each category at subsection 718.304(a) or (c) tends to establish the existence of complicated pneumoconiosis, also taking into consideration the equivalency requirements of subsection 718.304(c), then she must weigh together the evidence at subsections 718.304(a) and (c) before determining whether invocation of the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304 has been established. *See*

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suffered from histoplasmosis, and specifically explained why he did not believe that the masses are due to tuberculosis, the administrative law judge erred in giving Dr. Wheeler's less weight on the ground that "it is unclear whether Dr. Wheeler was aware that [claimant's] tuberculosis skin test in December 2006 was negative." Decision and Order at 13 n.2; *see* Employer's Exhibit 6 at 48. Furthermore, the administrative law judge mischaracterized Dr. Wheeler's testimony in finding that "it is clear from Dr. Wheeler's statements that he requires biopsy evidence before he is willing to attribute large conglomerate pulmonary masses to complicated pneumoconiosis." Decision and Order at 14. Contrary to the administrative law judge's finding, although Dr. Wheeler testified that he considered a biopsy to be proper protocol for treatment of claimant's lung condition, Dr. Wheeler also gave specific reasons why he did not diagnosis complicated pneumoconiosis in this case, even in the absence of a biopsy. Employer's Exhibit 6 at 67-71.

Lester, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Gollie,* 22 BLR 1-311; *Melnick at* 16 BLR 1-33-34. In determining the weight to accord the conflicting medical evidence, the administrative law judge must consider "the qualifications of the respective physicians, the explanation of their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses." *Sterling Smokeless Coal Company v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). The administrative law judge must also comply with the APA by resolving all conflicts in the evidence and setting forth the rationale underlying her findings. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). If, on remand, the administrative law judge finds that claimant has established the existence of complicated pneumoconiosis pursuant to Section 718.304, she must also conclude that claimant has satisfied his burden to establish a change in an applicable condition of entitlement at Section 725.309. *See White,* 23 BLR at 1-3. Thereafter, the administrative law judge must determine whether claimant has established, based on a review of all of the record evidence, that he is entitled to the irrebuttable presumption of total disability due to pneumoconiosis. *See Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18. If so, the administrative law judge must then determine whether claimant's pneumoconiosis arose, at least in part, out of coal mine employment pursuant to Section 718.203. *See* 20 C.F.R. §718.203; *The Daniels Co. v. Mitchell*, 479 F.3d 321, 337, 24 BLR 2-1, 2-28 (4th Cir. 2007).

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 consideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge