BRB Nos. 13-0426 BLA
and 13-0430 BLA

AMY L. RICHARDS (Widow of and on behalf of RANSOME RICHARDS)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 05/22/2014
ISLAND CREEK COAL COMPANY	)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order Denying Benefits (2011-BLA-05045 and 2011-BLA-05854) of Administrative Law Judge Thomas M. Burke, rendered on a

[1] Claimant is the surviving spouse of the miner. She is pursuing a survivor's claim on her own behalf and is continuing to pursue the miner's claim on behalf of his estate.

miner's subsequent claim[2] and a survivor's claim pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012) (the Act). Adjudicating both claims pursuant to 20 C.F.R. Part 718, the administrative law judge accepted the parties' stipulation to thirty-nine years of coal mine employment. In the miner's subsequent claim, the administrative law judge found that, because the newly submitted medical evidence was insufficient to establish either the existence of complicated pneumoconiosis or a totally disabling respiratory or pulmonary impairment, claimant could not invoke the presumptions set forth in 20 C.F.R. §718.304 and amended Section 411(c)(4)[3] in either claim, nor could she establish a change in an applicable condition of entitlement under 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits in the miner's claim. Considering the survivor's claim, without the benefit of the presumptions at 20 C.F.R. §718.304 and amended Section 411(c)(4), the administrative law judge found that claimant established the existence of simple clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but failed to prove that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Therefore, the administrative law judge denied benefits in the survivor's claim.

Claimant argues that the administrative law judge erred in finding that she failed to invoke the irrebuttable presumption that the miner was totally disabled due to pneumoconiosis and that his death was due to pneumoconiosis at 20 C.F.R. §718.304. Employer responds, urging affirmance of the administrative law judge's denial of both

[2] The miner's current subsequent claim was filed on March 21, 2002. Miner's Claim (MC) Director's Exhibit 6. His previous claim, filed on September 26, 2000, was denied on March 20, 2001, because the evidence was insufficient to establish total disability causation. On May 21, 2004, the miner died. MC Director's Exhibit 40; Survivor's Claim (SC) Director's Exhibit 4. On March 28, 2011, claimant filed a claim for survivor's benefits. SC Director's Exhibit 2. The administrative law judge found that claimant previously filed a survivor's claim on November 10, 2004, but that Administrative Law Judge Michael P. Lesniak granted claimant's request to withdraw the claim. SC Director's Exhibit 74.

[3] Under amended Section 411(c)(4), a miner is presumed to be totally disabled due to pneumoconiosis, or his death 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), as implemented by 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013) (to be codified at 20 C.F.R. §718.305).

claims. The Director, Office of Workers' Compensation Programs, declined to file a substantive response unless requested to do so by the Board.[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.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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, 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. Further, the United States Court of Appeals for the Fourth Circuit has held that the administrative law judge must perform an equivalency determination to make certain that, regardless of which diagnostic technique is used, the same underlying condition triggers the irrebuttable presumption. Specifically, the court has held that "[b]ecause prong (A) sets out an entirely objective scientific standard" - i.e., an opacity on an x-ray greater than one centimeter - x-ray evidence provides the benchmark for determining what, under prong (B), is a massive lesion and what, under prong (C), is an equivalent diagnostic result reached by other means. *Scarbro v. E. Associated Coal Corp.*, 220 F.3d 250, 256, 22 BLR 2-93, 2-101 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-560-61 (4th Cir. 1999). Although the court indicated in *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366, 23 BLR 2-374, 2-387 (4th Cir. 2006), that a diagnosis of massive lesions, standing alone, can satisfy 20 C.F.R. §718.304(b), it did not overrule its holdings in *Scarbro* and *Blankenship*, that "massive lesions" are those which, when x-rayed, would appear as

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that the newly submitted evidence was insufficient to establish total disability at 20 C.F.R. §718.204(b)(2), that the amended Section 411(c)(4) presumption was not invoked in either claim, and that claimant did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3, 28, 30-31.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner'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 7.

opacities greater than one centimeter in diameter. *Perry*, 469 F.3d at 366, 23 BLR at 2-387.

In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *See Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc). The introduction of legally sufficient evidence of complicated pneumoconiosis does not, however, automatically invoke the irrebuttable presumption found at 20 C.F.R. §718.304. The administrative law judge must examine all the evidence on this issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence that there is no pneumoconiosis, resolve any conflicts, and make a finding of fact. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 24 BLR 2-269 (4th Cir. 2010); *Scarbro*, 220 F.3d at 256, 22 BLR at 2-201; *Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Melnick*, 16 BLR at 1-33-34.

Pursuant to 20 C.F.R. §718.304(a), the administrative law judge considered seven readings of two x-rays dated May 7, 2002, and June 18, 2003, and "numerous" x-ray readings contained in the miner's treatment records. Decision and Order at 24. The administrative law judge found that the May 7, 2002 x-ray was positive for complicated pneumoconiosis, based on the reading by Dr. Alexander, who is dually qualified as a Board-certified radiologist and B reader.[6] *Id*.; Survivor's Claim (SC) Claimant's Exhibit 5. Regarding the June 18, 2003 film, the administrative law judge determined that it was negative for complicated pneumoconiosis, based on the readings by Dr. Alexander and Dr. Wheeler, who is also a dually qualified physician, and by Dr. Zaldivar, who is a B reader. Decision and Order at 24; Miner's Claim (MC) Director's Exhibit 23; SC Claimant's Exhibit 6; SC Employer's Exhibit 6. Although the administrative law judge acknowledged that Dr. Alexander initially identified a Category A large opacity on the ILO form, the administrative law judge found that Dr. Alexander ultimately interpreted this film as negative, as the physician indicated on the ILO form, and an attached report, that there were surgical staples at the site of the large opacity that he had observed on the May 7, 2002 x-ray. Decision and Order at 24; SC Claimant's Exhibit 6. The administrative law judge found that the x-ray readings in the treatment records contained no mention of large opacities or complicated pneumoconiosis. *Id*. He concluded that the weight of the x-ray evidence was negative for complicated pneumoconiosis, stating:

[6] Dr. Alexander also read the May 7, 2002 x-ray as positive for simple pneumoconiosis. Dr. Ranavaya, a B reader, read this film as positive for simple and complicated pneumoconiosis. Dr. Zaldivar, a B reader, read the film as negative for complicated pneumoconiosis, but positive for simple pneumoconiosis.

> The controlling interpretation of the negative June 18, 2003 study was made by Drs. Alexander, Wheeler, and Zaldivar. The controlling interpretation of the positive May 7, 2002 x-ray was made by Drs. Alexander and Ranavaya. I give less weight to Dr. Alexander's positive opinion than to his negative one, for two reasons. First, the negative opinion is the only one corroborated by another dually qualified reader. Second, the negative opinion came later in time and acknowledged the positive opinion by pointing out that the previous large opacity was now gone, ostensibly due to the surgery whose staples were still present. Accordingly, I find that Dr. Alexander's negative opinion is entitled to greater weight than his positive opinion, leaving the positive x-ray supported only by a B-reader, and the negative x-ray supported by two dually qualified readers and a B-reader. The negative x-ray is therefore entitled to the greatest weight . . . .

Id. at 25.

Claimant argues that, in considering the x-ray evidence at 20 C.F.R. §718.304(a), the administrative law judge did not properly weigh the readings of the June 18, 2003 x-ray performed by Drs. Alexander and Wheeler.[7] Claimant maintains that, contrary to the administrative law judge's finding, Dr. Alexander's interpretation of this x-ray was positive for complicated pneumoconiosis. Claimant further contends that the administrative law judge should have discredited Dr. Wheeler's negative reading because he was "the only physician of record who did not find the existence of pneumoconiosis, even simple pneumoconiosis." Claimant's Brief at 12.

Contrary to claimant's allegation, although the administrative law judge could have given less weight to Dr. Wheeler's negative reading of the June 18, 2003 x-ray because he was the sole physician who did not diagnose pneumoconiosis in any form, the administrative law judge was not required to do so.[8] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). Claimant is correct, however, in arguing that

[7] Claimant states that she "agrees with the administrative law judge's finding that the 5/7/02 chest x-ray is positive for complicated pneumoconiosis and that the least weight should be given to the treatment chest x-rays." Claimant's Brief at 10.

[8] Dr. Wheeler classified the x-ray as 0/1 and stated in the comments section of the ILO form that "some small nodules could be pneumoconiosis but [the] pattern is asymmetrical and mainly in [the] lateral periphery, [right upper lung] and apex." Employer's Exhibit 6.

the administrative law judge did not properly weigh the June 18, 2003 x-ray. There is no dispute that the mass in the left upper lobe of the miner's lung that was observed by physicians on the May 7, 2002 x-ray was no longer present on the June 18, 2003 x-ray because that portion of the miner's lung was resected during a biopsy performed on October 4, 2002. *See* MC Director's Exhibit 23; SC Claimant's Exhibits 3, 6; SC Employer's Exhibit 6. Under these circumstances, it was irrational for the administrative law judge to weigh the June 18, 2003 x-ray against the May 7, 2002 x-ray. *See Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985). We vacate, therefore, the administrative law judge's finding that the x-ray evidence, as a whole, is negative for complicated pneumoconiosis.

Relevant to 20 C.F.R. §718.304(b), the administrative law judge considered the biopsy reports of Drs. Jelic, Oesterling and Bush and the autopsy reports of Drs. Plata, Oesterling and Bush. Dr. Jelic was the pathologist who examined the tissue obtained during a biopsy performed on October 4, 2002, to rule out the presence of a malignancy. SC Claimant's Exhibit 3. Dr. Jelic concluded that the miner's biopsy showed, "Progressive Massive Pulmonary Fibrosis (Complicated Coal Workers' Pneumoconiosis)" and "chronic silicosis." *Id*. The administrative law judge accorded "less weight" to Dr. Jelic's biopsy report, citing Dr. Zaldivar's "point" that Dr. Jelic's "findings did not match with his conclusions." Decision and Order at 25; MC Director's Exhibit 23. The administrative law judge also noted that claimant did not establish that Dr. Jelic's qualifications were superior to those of Drs. Oesterling and Bush, both of whom ruled out the presence of complicated pneumoconiosis. Decision and Order at 25. For these reasons, the administrative law judge concluded that the opinions of Drs. Oesterling and Bush "are to be given more weight than that of Dr. Jelic, and so the biopsy evidence should be considered negative for complicated pneumoconiosis." *Id*.; SC Employer's Exhibits 16, 18, 23-25. With respect to the autopsy evidence, the administrative law judge found that Dr. Plata's diagnosis of complicated pneumoconiosis was outweighed by the contrary opinions of Drs. Oesterling and Bush, based on their superior qualifications and Dr. Plata's failure to adequately explain how his observations on gross examination of the miner's body supported his conclusion.[9] Decision and Order at 25-27; SC Claimant's Exhibit 2; SC Employer's Exhibits 16, 18, 23-25.

[9] The administrative law judge accepted Dr. Plata's post-hearing deposition taken on September 18, 2012. Decision and Order at 3. Dr. Plata prepared a final autopsy report dated June 30, 2004, that was attached, without objection, to his deposition. SC Claimant's Exhibit 2 at 21. Claimant's October 5, 2012 cover letter requests the admission of Dr. Plata's post-hearing deposition as Claimant's Exhibit 2. Employer acknowledged Dr. Plata's final autopsy report in its post-hearing brief and in its response brief before the Board. Employer's Response Brief at 15.

Claimant asserts that, although Drs. Oesterling and Bush may have authored more articles and engaged in activities related to developing or demonstrating their expertise as pathologists, the administrative law judge erred in giving their biopsy reports more weight because he did not explain why these additional activities gave them a better understanding of whether complicated pneumoconiosis was present. Claimant further contends that the administrative law judge mischaracterized Dr. Jelic's opinion and erred in relying on Dr. Zaldivar's opinion to discredit Dr. Jelic's diagnosis of complicated pneumoconiosis. In addition, claimant maintains that the administrative law judge erred in finding that the opinions of Drs. Oesterling and Bush supported a finding that the miner did not have complicated pneumoconiosis.

Claimant's contentions have merit, in part. Although claimant is correct in stating that Dr. Bush identified lesions measuring up to 1.4 centimeters, located beneath, or adjacent to, the pleura, and that Dr. Oesterling testified that the 1.4 centimeter lesion described by Dr. Bush would appear as an opacity of pneumoconiosis, greater than one-centimeter in diameter on x-ray, claimant omits Dr. Oesterling's statement that the lesion would appear as a large opacity on x-ray only if it was in the interstitium of the miner's lung. Claimant's Brief at 18, *citing* SC Employer's Exhibit 25 at 41. We reject, therefore, claimant's allegation that the administrative law judge should have treated Dr. Oesterling's statement as a diagnosis of complicated pneumoconiosis.[10] SC Employer's Exhibit 25 at 41.

As claimant maintains, however, the administrative law judge did not accurately characterize Dr. Jelic's report when he accepted Dr. Zaldivar's view that Dr. Jelic "observed areas of coalescence, not 2-[centimeter]-large lesions . . . ." Decision and

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[10] At Dr. Oesterling's deposition on October 11, 2012, he stated:

> A. …[Y]es, there were areas on the pleural surface that may have reached 1.4 cm, but that was merely a flat extension along that [pleural] membrane. It was not in any way progressive massive fibrosis or complicated coal workers' pneumoconiosis.
>
> Q. Would a 1.4 centimeter lesion of coal workers' pneumoconiosis, if it was present, present as greater than 1 centimeter as seen on chest x-ray?
>
> A. Oh, absolutely. If it's in the interstitium of the lung and it does measure that kind of, if you will, an average diameter, yes, it would show on x-ray as a lesion of greater than 1 centimeter.

Employer's Exhibit 25 at 41.

Order at 25, *citing* MC Director's Exhibit 23. Rather, on gross examination of the resected mass, Dr. Jelic stated: "Part # 4 is received in formalin labeled with the patient's name and left upper lobe mass. The specimen consists of one segment of lung which measures 5.5 x 3.7 x 2.7 cm. The specimen weighs 15 grams. The cut sections reveal lung parenchyma with black dots. No tumor seen." MC Claimant's Exhibit 3. In addition, claimant accurately states that the administrative law judge accepted the two-centimeter standard referenced by Drs. Zaldivar, Bush and Oesterling without determining whether this standard is consistent with the Fourth Circuit's holdings in *Scarbro* and *Blankenship*. Accordingly, we vacate the administrative law judge's decision to give "less weight" to Dr. Jelic's biopsy report, and his finding that the weight of the biopsy evidence is negative for complicated pneumoconiosis.

Regarding the administrative law judge's finding that the autopsy evidence is also negative for complicated pneumoconiosis under 20 C.F.R. §718.304(b), claimant alleges that the administrative law judge erred in finding that Dr. Plata's observation of large areas of pigmentation on gross examination is undermined by Dr. Oesterling's opinion. Claimant further contends that the administrative law judge failed to properly consider Dr. Plata's deposition testimony and failed to consider that, as the autopsy prosector, Dr. Plata was in a better position than Drs. Oesterling and Bush to diagnose complicated pneumoconiosis. Claimant's arguments have merit.

In summarizing Dr. Plata's findings on autopsy, the administrative law judge noted that Dr. Plata identified areas of pigmentation on gross examination, "which only [Dr. Plata] had been able to see." Decision and Order at 27. The administrative law judge accepted Dr. Oesterling's opinion that the area of pigmentation had no depth and "only represented macular disease of the pleura, which is not sufficient for a diagnosis of [progressive massive fibrosis (PMF)]." *Id*. In so doing, the administrative law judge did not address Dr. Plata's additional findings on gross examination of: fibrotic adhesions on the left upper lobe and multiple areas of black pigmentation with scarring that varied from small spots to larger areas of several centimeters in greatest dimension; pneumoconiosis scarring ranging from small macules of two to three millimeters to areas of at least two centimeters in greatest dimension, which were confirmed microscopically; fibrosis throughout both lungs; and nodules in the lung tissue, the largest measuring at least two centimeters. SC Claimant's Exhibit 2 at 14-17, 19.

The administrative law judge also did not discuss Dr. Plata's testimony that, as the autopsy prosector, he was in a better position than a physician who reviewed the slides to determine the size of the lesion because he conducted a visual examination and palpated the tissue. SC Claimant's Exhibit 2 at 14-15. Dr. Plata stated:

> . . . [W]hen this process is more severe, like in this case where there were not only millimeters but centimeters, and some of those condensations of

> lung tissue – it looked like a piece of charcoal – that grossly, even without microscopic examination, to me is called complicated pneumoconiosis.
>
> In this particular case when I see essentially chunks of tissue that are almost like a piece of charcoal, this is beyond simple coal workers' pneumoconiosis.
>
> And this is not just one area. This is multiple chunks, chunks, chunks of condensation of the lung tissue with presence of carbon deposits and presence of scar tissue.

SC Claimant's Exhibit 2 at 38. In *Perry*, the Fourth Circuit recognized the advantage that a prosector has "to assess the size of the nodules in gross and under a microscope." *Perry*, 469 F.3d at 366, 23 BLR at 2-387. The evidence, in that case, showed that "conducting the autopsy is the 'gold standard' for diagnosing disease." *Id*. Because the deposition testimony that the administrative law judge did not consider indicates that Dr. Plata rendered findings on gross examination beyond noting the presence of pigmentation that may entitle his opinion to greater weight, we must vacate the administrative law judge's finding that the autopsy evidence is negative for complicated pneumoconiosis under 20 C.F.R. §718.304(b). *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 191-92, 22 BLR 2-251, 2-262 (4th Cir. 2000); *Tackett*, 7 BLR at 1-706.

With respect to the evidence relevant to 20 C.F.R. §718.304(c), the administrative law judge considered readings of CT scans in the record designated by the parties, and those referenced in the treatment records. The administrative law judge also considered the medical opinions of Drs. Ranavaya, Zaldivar and Rosenberg. The administrative law judge found that "none of the designated CT scan readings, and none of the CT scan readings in the treatment records, mentioned complicated pneumoconiosis." Decision and Order at 25. The administrative law judge determined that Dr. Ranavaya's diagnosis of complicated pneumoconiosis was entitled to "little weight," because it was based on his own reading of the May 7, 2002 x-ray, which the administrative law judge discredited, and Dr. Ranavaya "was privy to less of the evidence of record" than Drs. Zaldivar and Rosenberg. *Id*. at 27; *see* MC Director's Exhibits 12, 23; SC Claimant's Exhibit 4; SC Employer's Exhibits 5, 12, 9, 10. The administrative law judge concluded, therefore, that claimant did not establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order at 27.

Claimant contends that, in weighing the CT scan evidence, the administrative law judge erred in giving any weight to Dr. Wheeler's negative readings because, in contrast to the other physicians, he did not detect even simple pneumoconiosis. We reject this argument for the reason we rejected claimant's identical argument at 20 C.F.R. §718.304(a). However, because the administrative law judge relied on findings at 20

C.F.R. §718.304(a), (b), that we have vacated to resolve the conflict between the opinion of Dr. Ranavaya and the opinions of Drs. Zaldivar and Rosenberg at 20 C.F.R. §718.304(c), we vacate his determination that the other evidence relevant to the existence of complicated pneumoconiosis, and the evidence as a whole, is negative for the disease. We further vacate, therefore, the denial of benefits in both the miner's claim and the survivor's claim.

On remand, the administrative law judge must first reconsider the x-ray evidence relevant to 20 C.F.R. §718.304(a), particularly the readings of the June 18, 2003 x-ray submitted by Drs. Alexander and Wheeler. Pursuant to 20 C.F.R. §718.304(b), the administrative law judge must reconsider the biopsy report of Dr. Jelic and determine whether his diagnosis of progressive massive fibrosis is documented and reasoned. The administrative law judge must also determine whether Drs. Oesterling and Bush applied a stricter standard than the legal standard, which requires that the opacity diagnosed by biopsy or autopsy under 20 C.F.R. §718.304(b) show as a greater-than-one-centimeter opacity if seen on a chest x-ray. *Scarbro*, 220 F.3d at 255, 22 BLR at 2-100; *Blankenship*, 177 F.3d at 243, 22 BLR at 2-561-62. The administrative law judge is further required to reconsider Dr. Plata's statements on gross examination, and his testimony that what he observed on gross examination was microscopically confirmed as nodules of coal workers' pneumoconiosis. *See* SC Claimant's Exhibit 2 at 20, 27-29, 42, 49-50; SC Employer's Exhibits 16 at 3, 4, 18 at 2, 23 at 28-29, 24 at 41, 46-47, 60-61, 25 at 42. Finally, the administrative law judge must determine whether, in their autopsy reports, Drs. Oesterling and Bush applied a stricter standard than the legal standard set forth in *Scarbro* and *Blankenship*. The administrative law judge must then reconsider his weighing of the all the relevant evidence of record under 20 C.F.R. §718.304, in light of his findings regarding the x-ray, biopsy and autopsy evidence.

In weighing the relevant evidence on remand, the administrative law judge should address the comparative credentials[11] of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and whether their opinions conform to standards set forth in *Scarbro and Blankenship*. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. The

[11] In examining the credentials of the pathologists, the administrative law judge found, *inter alia*, that Drs. Oesterling and Bush "testified to their extensive experience performing autopsies on coal miners, including pneumoconiosis evaluations, whereas Dr. Plata gave no such detail." Decision and Order at 25-26. A review of the record indicates, however, that Dr. Plata testified that he performed on average five coal workers' pneumoconiosis-related autopsies per year, in addition to approximately 100,000 biopsies, but he could not state how many of the biopsies were related to black lung disease. SC Claimant's Exhibit 2 at 34-35, 45, 46.

administrative law judge is required to make a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented," as set forth in the Administrative Procedure Act, 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 Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1985). If on remand, the administrative law judge awards benefits on the miner's claim, he must determine whether claimant is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis, pursuant to 30 U.S.C. §932(*l*).

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge