U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0004 BLA

DONALD BELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOUNTAIN LAUREL COAL COMPANY/ WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND, c/o WEST VIRGINIA INSURANCE COMMISSION	)	DATE ISSUED: 11/20/2015
	)	
Employer/Carrier-Respondents	)	
	)	
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 of Kenneth A. Krantz, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (David Huffman Law Services), Parkersburg, West Virginia, for claimant.

Jeffrey R. Soukup (Jackson Kelly, PLLC), Lexington, Kentucky, for employer/carrier.

Barry H. Joyner (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: BUZZARD, GILLIGAN, and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (2011-BLA-05879) of Administrative Law Judge Kenneth A. Krantz, rendered on an initial claim filed on August 18, 2010, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (the Act). This case is before the Board for the second time. In his initial Decision and Order Denying Benefits, issued on January 10, 2013, the administrative law judge found that the x-ray evidence was insufficient to establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a), and he thus determined that claimant was not entitled to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to amended Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3).[1] Based on the filing date of the claim, and his determinations that claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment, the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] However, the administrative law judge also concluded that employer rebutted the amended Section 411(c)(4) presumption by establishing that claimant did not have pneumoconiosis. Accordingly, benefits were denied.

Claimant appealed and the Board vacated the denial of benefits. *Bell v. Mountain Laurel Coal Co.*, BRB No. 13-0175 BLA, slip op. at 3-5 (Dec. 23, 2013) (unpub.). The Board held that the administrative law judge erred in finding the x-ray evidence to be negative for simple and complicated pneumoconiosis by "relying on Dr. Shipley's negative reading [of an October 4, 2010 x-ray], based solely on his credentials, without addressing the qualified nature of Dr. Shipley's opinion regarding the cause of the lesions he observed in claimant's mid-lung zone." *Id.* at 4 (citations omitted). Thus, the Board vacated the administrative law judge's finding that claimant failed to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). *Id.*, *citing Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 24 BLR 2-269 (4th Cir. 2010). To the

[1] The administrative law judge did not render findings pursuant to 20 C.F.R. §718.304(b), (c).

[2] Pursuant to amended Section 411(c)(4), claimant is entitled to a rebuttable presumption of total disability due to pneumoconiosis, if he establishes 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 20 C.F.R. §718.305.

extent that the administrative law judge relied on Dr. Shipley's negative x-ray reading to support his findings that employer disproved the existence of both clinical and legal pneumoconiosis, the Board vacated the administrative law judge's finding that employer successfully rebutted the amended Section 411(c)(4) presumption. *Id*.

On September 22, 2014, the administrative law judge issued his Decision and Order on Remand, which is the subject of the current appeal. The administrative law judge determined that Dr. Shipley's negative x-ray reading was not speculative and found that claimant failed to establish complicated pneumoconiosis, based on the x-ray evidence at 20 C.F.R. §718.304(a), and did not invoke the irrebuttable presumption of total disability due to pneumoconiosis. Additionally, the administrative law judge again found that employer rebutted the amended Section 411(c)(4) presumption by disproving the existence of clinical and legal pneumoconiosis, and he denied benefits.

On appeal, claimant argues that the administrative law judge erred in crediting Dr. Shipley's negative x-ray reading and in finding that he does not have complicated pneumoconiosis. Claimant also contends that the administrative law judge erred in finding that employer rebutted the amended Section 411(c)(4) presumption. The Director, Office of Workers' Compensation Programs (the Director), has filed a brief, asserting that the opinions of Drs. Castle and Ghio are not credible to rebut the amended Section 411(c)(4) presumption. Employer responds, urging affirmance of the denial of benefits.

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).

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

I. COMPLICATED PNEUMOCONIOSIS

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; *see E. Assoc. 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). In determining whether a miner 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. *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).

Relevant to 20 C.F.R. §718.304(a), the record contains three interpretations of one analog x-ray dated October 4, 2010. Dr. Forehand, a B reader, read the x-ray as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 10. In the "comments" section of the ILO form, Dr. Forehand noted "bilateral large conglomerate masses" and stated, "previous work up negative for malignancy." *Id*. Dr. Forehand further indicated that claimant had a negative PET scan. *Id*.

Dr. Shipley, dually qualified as a Board-certified radiologist and B reader, also read the October 4, 2010 analog x-ray and indicated that there were no parenchymal or pleural abnormalities consistent with pneumoconiosis. Director's Exhibit 11. However, on the ILO form, he noted other abnormalities on the film, and wrote "probably not [coal workers' pneumoconiosis] – consider CT to [rule out] malignancy." *Id*. In a narrative report that accompanied the ILO form, Dr. Shipley wrote "[t]here is no evidence of upper zone predominant small rounded opacities to suggest coal workers' pneumoconiosis." *Id*. He then described:

> Ill-defined lobulated noncalcified nodular lesions are present over each mid zone laterally. Because of the absence of background small rounded opacities, these are unlikely to represent large opacities of pneumoconiosis.

Id. Dr. Shipley suggested a comparison with other radiographs to rule out malignancy, and a CT scan "to better characterize" the x-ray findings. *Id*. Finally, Dr. Shipley concluded there were "no findings consistent with the typical findings of coal worker's

pneumoconiosis" and noted "bilateral irregular nodules, possibly malignancy." *Id*. Dr. Castle, a B reader, also read the October 4, 2010 x-ray as negative for simple and complicated pneumoconiosis, but wrote on the form "[bilateral] mid lung zone pleural based nodules vs. pleural thickening of ? etiology." Employer's Exhibit 1. He further stated "[t]his does not look like [coal workers' pneumoconiosis]." *Id*.

In reweighing the x-ray evidence on remand and addressing the Board's remand instructions pertaining to Dr. Shipley's negative x-ray reading, the administrative law judge stated:

> After further examination, I do not find Dr. Shipley's x-ray interpretation to be speculative and unsupported. Per the requirements of the ILO form, Dr. Shipley clearly indicated there are no parenchymal or pleural abnormalities consistent with pneumoconiosis. He did not find any large opacities; i.e., Dr. Shipley's reading is negative for pneumoconiosis. Per [20 C.F.R. §]718.304(a), [c]laimant bears the burden of proving total disability via a diagnosis by positive x-ray reading. His notation, "Probably not [coal workers' pneumoconiosis] – consider CT to [rule out] malignancy," demonstrates the actions of a prudent doctor as well as the limitations of making a definitive diagnosis on the basis of one x-ray. Rather than an expression of equivocation or doubt, Dr. Shipley's recommendation reflects the inherent uncertainty in medical treatment. Regardless of the diagnostic shortcomings of a lone x-ray, the legal standard of [Section] 718.304(a) clearly places the burden, by a preponderance of the evidence, on [c]laimant to present x-ray readings positive for large opacities.

Decision and Order on Remand at 9. The administrative law judge also found that "Dr. Forehand's notation on his x-ray reading about a negative PET scan alludes to a medical check-up prior to the x-ray date as well as facts not in evidence." *Id*. The administrative law judge concluded that "those notations do not add weight to Dr. Forehand's reading, nor do they detract from Dr. Shipley's reading." *Id*.

The administrative law judge further observed that the facts of this case could be distinguished from *Cox*[4] because "the x-ray evidence in the present case consists of a

[4] The Fourth Circuit held in *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 24 BLR 2-269 (4th Cir. 2010), that an administrative law judge may reject, as speculative, the opinions of employer's experts, who exclude coal dust exposure as the cause for large opacities or masses identified by x-ray, and attribute the radiological findings to conditions, such as granulomatous disease or sarcoidosis, if they fail to point to evidence in the record indicating that the miner suffers or suffered from any of the alternative diseases. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284.

single x-ray interpreted by three doctors, and *two of the interpretations found the x-ray negative for any large masses*," whereas "[t]he *Cox* interpretations that were discounted as speculative were those that did find large opacities but stated the masses were not pneumoconiosis without providing evidence of an alternative diagnosis." Decision and Order on Remand at 9; *Cox*, 602 F.3d at 285, 24 BLR at 2-284. The administrative law judge also distinguished this case from *Cox* because he found that "[Dr. Shipley's] reading *is* supported by evidence in the record that [c]laimant was diagnosed with alternative diseases," namely "Drs. Castle and Ghio stated [c]laimant's difficulty breathing was due to tobacco use and obesity." Decision and Order on Remand at 9. The administrative law judge concluded:

> I do not find Dr. Shipley's reading speculative, and I find his interpretation, as a B-reader and Board-certified radiologist, more persuasive than Dr. Forehand's positive reading. Accordingly, I find that the preponderance of the evidence supports a negative determination for pneumoconiosis by x-ray under [20 C.F.R.] §718.202(a)(1). Therefore, [c]laimant is not entitled to the irrebuttable presumption of [20 C.F.R. §]718.304.

Id.

Claimant argues that the administrative law judge failed to consider all of the relevant evidence and erred in distinguishing this case from *Cox,* based on his erroneous belief that employer's physicians did not identify a large mass or large opacity. Claimant's arguments have merit. We agree that the administrative law judge failed to properly discuss evidence contained in the record that may be relevant to the presence of a mass and determine whether that evidence assists claimant in establishing that he has complicated pneumoconiosis. *See Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18.

Although Dr. Shipley indicated that there were no large opacities "consistent with pneumoconiosis" on the ILO form, he noted abnormalities and described them as being "unlikely to represent large opacities of pneumoconiosis" because he saw no background of simple pneumoconiosis. Director's Exhibit 11. Dr. Castle also interpreted claimant's x-ray as showing "bilat[eral] mid lung zone pleural based nodules vs. plural thickening of ? etiology." Employer's Exhibit 1. During his deposition on May 31, 2012, Dr. Castle testified that there are "nodular densities" in the middle lung zones, interpreted by Dr. Forehand as "bilateral large conglomerate masses," but distinguished them as not being characteristic of complicated pneumoconiosis. Employer's Exhibit 2 at 14. Dr. Castle stated:

> The mass-like or nodular densities *that I think* [*Dr.*] *Forehand was describing that I also saw* were pleural based and in the middle lung zones. That location is not where you find large opacities of pneumoconiosis, and

> those did not have the characteristic appearance of pneumoconiosis. Those opacities, as I indicated were most likely due to previous scarring from inflammation or infection.

Id. at 14-15 (emphasis added). The administrative law judge, however, failed to address Dr. Castle's deposition testimony relevant to the existence of a mass. *See* Director's Exhibit 10; Employer's Exhibit 2 at 14; *Melnick*, 16 BLR at 1-37. Further, the administrative law judge did not discuss treatment records from Northern Hospital, which described that claimant had a CT scan of the left lobe of his lung on April 27, 2011, which showed a "persisting dense focal opacity extending to the adjacent pleural surface with estimated dimensions 2.8 x 2.6 cm" and an "ovoid peripheral opacity in the right upper lobe," which was said to be "stable at about 4.7 x 1.6 cm."[5] Employer's Exhibit 6 at 1.

When an administrative law judge fails to consider relevant evidence, the Board must remand the case for further consideration in accordance with the Administrative Procedure Act (the APA).[6] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). Thus, we vacate the administrative law judge's finding that claimant failed to establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and the denial of benefits. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; *Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Melnick*, 16 BLR at 1-37. On remand, the administrative law judge is instructed to reconsider the totality of the evidence and determine whether claimant established complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 and explain the basis for his findings of fact and conclusions of law in accordance with the APA. *Wojtowicz*, 12 BLR at 1-165.

[5] The file also contains two interpretations of an April 4, 2012 digital x-ray, one by Dr. Chin and one by Dr. Wheeler. *See* Employer's Exhibits 3, 5. The interpretation by Dr. Chin, a copy of which was included in Dr. Ghio's April 17, 2012 report, was not considered by the administrative law judge because it was not separately submitted into evidence by employer pursuant to 20 C.F.R. §718.107. *See* Employer's June 11, 2012 Evidence Summary Form. The interpretation by Dr. Wheeler was not considered by the administrative law judge because "the proponent of the x-ray did not establish that it was medically acceptable and relevant to refuting a claim to benefits." *See* January 10, 2013 Decision and Order at 26-27.

[6] The Administrative Procedure Act provides that every adjudicatory decision must include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

II. REBUTTAL OF THE AMENDED SECTION 411(c)(4) PRESUMPTION

Although we have vacated the denial of benefits, in the interest of judicial economy, we also address the challenges of claimant and the Director to the administrative law judge's conclusion that employer established rebuttal of the amended Section 411(c)(4) presumption.[7] In order to rebut the amended Section 411(c)(4) presumption of total disability due to pneumoconiosis, employer must affirmatively establish that claimant does not have legal[8] and clinical[9] pneumoconiosis, or prove that "no part of the miner's respiratory or pulmonary total disability was caused by

[7] Employer asserts that the Board should treat the arguments of the Director, Office of Workers' Compensation Programs (the Director), as waived because the Director did not participate in the formal hearing or the prior appeal before the Board, and did not submit a brief or raise arguments to the administrative law judge while the case was on remand. Because the Director has standing to ensure the proper enforcement and lawful administration of the Black Lung program, we reject employer's contention that the Director is precluded from raising arguments in the current appeal that were not presented to the administrative law judge or the Board in the prior appeal. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994).

[8] Legal pneumoconiosis includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulation also provides that "a disease 'arising out of coal mine employment' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[9] Clinical pneumoconiosis is defined as:

> [T]hose diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *Minich v. Keystone Coal Mining Corp.*, BLR , BRB No. 13-0544 BLA, slip op. at 10-11 (Apr. 21, 2015) (Boggs, J., concurring and dissenting); *see Barber v. Director, OWCP*, 43 F.3d 899, 900-01, 19 BLR 2-61, 2-65-66 (4th Cir. 1995); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980). As the administrative law judge failed to consider all the relevant evidence on the issue of complicated pneumoconiosis, and relied on those findings in evaluating the evidence with respect to clinical pneumoconiosis, we must vacate the administrative law judge's finding that employer disproved the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i), and we instruct the administrative law judge to reconsider that issue on remand, as necessary.

In finding that employer disproved the existence of legal pneumoconiosis, the administrative law judge credited, as well-documented and well-reasoned, the opinion of Dr. Castle that claimant's respiratory impairment was due entirely to smoking. Decision and Order on Remand at 11. The administrative law judge determined that Dr. Ghio's opinion was well-documented and well-reasoned, but gave it "somewhat" less weight than Dr. Castle's opinion because Dr. Ghio erroneously stated that claimant "did not have a medical diagnosis which could demonstrate any association with coal dust [exposure]." *Id*. at 11-12. The administrative law judge noted, however, that claimant's treatment records included a diagnosis of chronic obstructive pulmonary disease (COPD), contrary to Dr. Ghio's characterization. *Id*. at 11, *citing* Employer's Exhibit 6 at 3. The administrative law judge concluded that these opinions satisfied employer's burden of proof to establish that claimant does not have legal pneumoconiosis. *Id*. at 11-12.

The Director maintains that Dr. Castle's opinion is not credible to disprove that claimant has legal pneumoconiosis. Dr. Castle explained his opinion as follows:

> It is significant to note that there was a decline in values at the time of my studies from that of Dr. Forehand approximately [eleven] months earlier. This type of change is unlikely to occur due to a coal mine dust induced lung disease or coal workers' pneumoconiosis. When coal workers' pneumoconiosis causes impairment, it generally does so by causing a mixed, irreversible obstructive and restrictive ventilatory defect. There was no evidence of any restriction in this case. Furthermore, the decline in function between the two studies has occurred too rapidly to be due to progression of coal workers' pneumoconiosis. It is far more likely to be due to his ongoing tobacco smoking habit which has resulted in the development of tobacco induced chronic airway obstruction.

Employer's Exhibit 1. The Director asserts that, to the extent Dr. Castle "believes that [coal] dust-related disease cannot cause a purely obstructive impairment, that opinion is

contrary to the legal definition of pneumoconiosis at 20 C.F.R. §718.201(a)(2)." Director's Letter Brief at 3, *citing Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313, 25 BLR 2-115, 2-130 (4th Cir. 2012). The regulation states that legal pneumoconiosis "includes, but is not limited to, any chronic restrictive *or* obstructive pulmonary disease arising out of coal mine employment."[10] *See* 20 C.F.R. §718.201(a)(2) (emphasis added). We agree that the administrative law judge erred in failing to address whether Dr. Castle expressed views that are contrary to the regulatory definition of legal pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532, 21 BLR 2-323, 2-334 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

The Director also contends that the administrative law judge erred in giving any weight to Dr. Ghio's opinion relevant to rebuttal of the amended Section 411(c)(4) presumption because Dr. Ghio did not diagnose a lung disease or any respiratory or pulmonary impairment, contrary to the administrative law judge's findings that claimant suffers from COPD and that claimant is totally disabled by a respiratory or pulmonary impairment. Director's Letter Brief at 4, *citing Scott v. Mason Coal Co.*, 289 F.3d 263, 268-69, 22 BLR 2-372, 2-383-84 (4th Cir. 2002). We agree that the administrative law judge has failed to rationally explain his reliance on Dr. Ghio's opinion to find rebuttal established.[11] *See Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 733, 25 BLR 2-405, 2-424 (7th Cir. 2013); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); *Scott*, 289 F.3d at 269, 22 BLR at 2-383; *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Thus, because the administrative law judge failed to discuss all relevant factors that

[10] Contrary to employer's assertion, the Director does not characterize Dr. Castle's opinion as "hostile to the Act." *See Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988) (the Board has held that a medical opinion can be rejected as hostile to the Act only if it forecloses any possibility that simple pneumoconiosis can be disabling); Employer's Brief at 11-13; Director's Letter Brief at 3-4.

[11] The Director notes that Dr. Ghio's report contains Dr. Chin's reading of an April 2012 digital x-ray, which was not admitted into the record. Director's Letter Brief at 4. The Director also notes that Dr. Ghio considered Dr. Wheeler's negative reading of a digital x-ray, which the administrative law judge had determined was not credible. *Id.* The administrative law judge should address on remand whether any of the physicians relied on evidence that was not admitted into the record in rendering their medical conclusions, and the weight to accord their opinions if they have reviewed evidence outside of the record. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc) (McGranery and Hall, JJ., concurring and dissenting); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004).

pertain to the credibility of the opinions of Drs. Castle and Ghio, we vacate the administrative law judge's finding that employer disproved the existence of legal pneumoconiosis. *See Hicks*, 138 F.3d at 532, 21 BLR at 2-334.

On remand, the administrative law judge must reconsider whether employer has rebutted the amended Section 411(c)(4) presumption by disproving the existence of legal and clinical pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i), or by establishing that no part of claimant's respiratory disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). In reconsidering the medical opinion evidence on remand, the administrative law judge is instructed to weigh the evidence, taking into consideration the credibility of the physicians' explanations, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Hicks*, 138 F.3d at 532, 21 BLR at 2-334; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. The administrative law judge must also explain his findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order on Remand is vacated and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge