BRB No. 09-0132 BLA

L. G.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	
	)	DATE ISSUED: 10/30/2009
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 Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C. 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-5646) of Administrative Law Judge Linda S. Chapman (the administrative law judge), rendered on a subsequent claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).[1] In

[1] Claimant filed an initial claim for benefits on April 14, 1983. In a Decision and Order issued on March 25, 1988, Administrative Law Judge James W. Kerr found that claimant established the existence of pneumoconiosis but failed to establish that he was totally disabled. Claimant appealed, but while the appeal was pending, he also filed a Motion for Modification and Reconsideration. The Board dismissed the appeal without prejudice and remanded the case to the district director. On December 29, 1992, Administrative Law Judge Julius A. Johnson denied claimant's modification request.

her decision, issued on September 29, 2008, the administrative law judge credited claimant with twenty-seven and one-half years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge determined that while the newly submitted evidence failed to support a finding of total disability, it was sufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 and, thus, she found that claimant satisfied his burden of demonstrating a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Considering the merits of claimant's entitlement, the administrative law judge found that claimant was entitled to invocation of the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that claimant established the existence of complicated pneumoconiosis pursuant to Section 718.304, and a change in an applicable condition of entitlement pursuant to Section 725.309. Employer further argues that if the administrative law judge's award of benefits is affirmed, the Board must hold that she erred by not resolving the date of onset. Claimant and the Director, Office of Workers' Compensation Programs, have not filed briefs in this appeal. [2]

Although claimant appealed the denial, his appeal was later dismissed by the Board on April 22, 1994, because claimant failed to file a brief or respond to the Board's Order to Show Cause. Claimant filed a duplicate claim on February 23, 1996, which was denied by Administrative Law Judge Pamela Lakes Wood because the newly submitted evidence did not establish total disability. Claimant appealed, and the Board affirmed the denial. [*L. G.*] *v. Dominion Coal Corp.*, BRB No. 98-0531 BLA (Jan. 5, 1999) (unpub.). Claimant next filed a petition for modification, which was denied by Administrative Law Judge John C. Holmes on August 9, 2000. Pursuant to claimant's appeal, the Board vacated the denial and remanded the case for further consideration. [*L. G.*] *v. Dominion Coal Corp.*, BRB No. 00-1159 BLA (Aug. 23, 2001) (unpub.). On remand, Judge Holmes issued a decision on December 20, 2001, denying benefits, and his findings were affirmed by the Board. [*L. G.*] *v. Dominion Coal Corp.*, BRB No. 02-0312 BLA (Sept. 27, 2002) (unpub.). Claimant filed a second petition for modification, which was denied by Administrative Law Judge Thomas Burke on April 1, 2005. Claimant took no further action with regard to the denial of his duplicate claim, until he filed his current subsequent claim, under the revised regulations, on May 15, 2006. Director's Exhibit 4; *see Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-65 (2004) (*en banc*).

[2] We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings that the newly submitted evidence failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).

Where claimant 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). 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, because claimant's prior claim was denied on the ground that he failed to establish total disability, claimant was required to submit new evidence establishing this element of entitlement in order to have his claim reviewed on the merits. 20 C.F.R. §725.309(d)(2), (3); *White v. New White Coal Co., Inc.*, 23 BLR 1-1 (2004); *see also Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996) (*en banc*), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

Employer contends that the administrative law judge did not undertake the proper analysis to determine whether there has been an actual change in claimant's condition since the prior denial. Employer notes that in finding the x-ray evidence to be sufficient to establish that claimant has complicated pneumoconiosis pursuant to Section 718.304(a), the administrative law judge erred in considering evidence developed in the prior claim, and that she failed to apply the principles of *res judicata* in her consideration of whether claimant satisfied his burden of proof.

Contrary to employer's assertion, the Board has held that the doctrine of *res judicata* generally has no application in the context of subsequent claims, "as the purpose of Section 725.309 is to provide relief from the principles of *res judicata* to a miner whose physical condition worsens over time." *Sellards v. Director, OWCP*, 17 BLR 1-77, 1-79 (1993). Section 725.309 provides specifically that if claimant establishes a change in one of the applicable conditions of entitlement, "no findings made in connection with the prior claim, except those based on a party's failure to contest an issue (*see* §725.463), shall be binding on any party in the adjudication of the subsequent claim." 20 C.F.R. §725.309(d)(4). In addition, courts have held that *res judicata* does not apply in a subsequent claim where the issue is claimant's physical condition at entirely

[3] As claimant's coal mine employment occurred in Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. Director's Exhibits 1, 4; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

different times. *See Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 1362, 20 BLR 2-227, 2-235 (4th Cir. 1996) (*en banc*); *Lovilia Coal Co. v. Harvey*, 109 F.3d 445, 450, 21 BLR 2-50, 2-60 (8th Cir. 1997); *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 314, 20 BLR 2-76, 2-87 (3d Cir. 1995).

Notwithstanding, we agree with employer that the administrative law judge erred in failing to focus her analysis at Section 725.309 on the newly submitted evidence. The administrative law judge determined that claimant established a change in an applicable condition of entitlement because she found that the x-ray evidence was positive for complicated pneumoconiosis. Decision and Order at 10-17. However, in reaching her finding that claimant established a change in an applicable condition of entitlement, the administrative law judge considered readings of a February 24, 2004 x-ray, which were admitted into the record in conjunction with the prior claim. *Id*. at 13. Because the administrative law judge must base her determination as to whether there has been a change in an applicable condition of entitlement on the newly submitted evidence, we vacate her findings pursuant to Sections 718.304(a) and 725.309, and remand this case for further consideration.

In the interest of judicial economy, we will also address employer's remaining arguments on appeal. Employer contends that the administrative law judge erred in failing to explain, as required by the Administrative Procedure Act (APA),[4] how she resolved the conflict in the evidence as to whether claimant has complicated pneumoconiosis. Employer's assertion of error has merit.

Section 411(c)(3) of the Act, as implemented by Section 718.304, provides that there is an irrebuttable presumption of death 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.

[4] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 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), 932(a).

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. The administrative law judge must examine all the evidence on this issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve any conflicts, and make a finding of fact. *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 (1991) (*en banc*); *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North American Coal Corp.*, 626 F.2d 1137, 2 BLR 2-45 (3d Cir. 1980).

Additionally, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, 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 appear 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).

In this case, the administrative law judge found that claimant established the existence of complicated pneumoconiosis based on the x-ray evidence at Section 718.304(a). In reaching this determination, the administrative law judge considered eight readings of four x-rays dated February 24, 2004, August 17, 2006, December 12, 2006 and May 24, 2007. The February 24, 2004 x-ray was read by Dr. Cappiello, a Board-certified radiologist and B reader, as positive for complicated pneumoconiosis, Category A, and by Dr. Wheeler, a Board-certified radiologist and B reader, as negative for pneumoconiosis.[5] Director's Exhibit 2. The x-ray dated August 17, 2006, was read by Dr. Rasmussen, a B reader, as positive for complicated pneumoconiosis, Category A; by Dr. Alexander, a Board-certified radiologist and B reader, as positive for simple pneumoconiosis; and by Dr. Wheeler, a Board-certified radiologist and B reader, as negative for pneumoconiosis.[6] Director's Exhibits 12, 16. Dr. Wheeler also identified a 1.5 centimeter mass in the left lung, compatible with granulomas or possible cancer. Director's Exhibit 16. The December 12, 2006 x-ray was read by Dr. Castle, a B reader,

[5] As discussed *infra*, the February 24, 2004 x-ray readings were part of the record in the prior claim.

[6] Dr. Navani read the August 17, 2006 x-ray for quality purposes only. Director's Exhibit 15.

as positive for simple pneumoconiosis, with a questionable lesion in the left mid zone. Director's Exhibit 13. Finally, the May 24, 2007 x-ray was read by Dr. Alexander as positive for simple pneumoconiosis, profusion 2/2, and complicated pneumoconiosis, Category A. Claimant's Exhibit 1. Dr. Wheeler read the May 24, 2007 x-ray as negative for pneumoconiosis. Employer's Exhibit 4.

After summarizing the x-ray evidence, the administrative law judge concluded that the preponderance of the x-ray evidence established that claimant "has a condition that shows up on x-ray as a one centimeter or greater opacity in his lungs," as "five of the eight physicians who reviewed [claimant's] x-rays noted either [C]ategory A opacities, or a corresponding mass or process in both of his lungs that measured greater than one centimeter." Decision and Order at 14. In addition, the administrative law judge found that Dr. Wheeler's opinion, that the masses seen on x-ray were compatible with granulomas or a tumor, was equivocal and speculative, since there was no evidence in the record that claimant had been treated for either condition. *Id*. at 16. The administrative law judge further found that Dr. Wheeler's negative readings were inconsistent with the finding, in the prior claim, that claimant established the existence of simple pneumoconiosis. *Id*.

Reviewing the evidence under Section 718.304(c),[7] the administrative law judge credited Dr. Rasmussen's diagnosis of complicated pneumoconiosis because it was consistent with her findings with regard to the x-ray evidence. Decision and Order at 15. Conversely, the administrative law judge rejected Dr. Castle's opinion, that claimant did not have complicated pneumoconiosis, because she found that Dr. Castle had not addressed the radiographic evidence that established complicated pneumoconiosis. *Id*. The administrative law judge similarly rejected Dr. Tuteur's opinion that claimant did not have complicated pneumoconiosis because she found that he had not considered Dr. Alexander's Category A reading of the May 24, 2007 x-ray or Dr. Wheeler's findings of a 1.5 cm mass on claimant's August 17, 2006 and May 24, 2007 x-rays. Decision and Order at 16.

The administrative law judge concluded that claimant established that he is entitled to the irrebuttable presumption of total disability due to pneumoconiosis, based on a preponderance of the x-ray evidence, and that "[*e*]*mployer has not offered any affirmative evidence* that [the] large opacity of pneumoconiosis is due to something other than coal dust exposure." Decision and Order at 17 (emphasis added). The administrative law judge also found that claimant worked more than ten years in coal

[7] There is no biopsy evidence in the record for consideration at 20 C.F.R. §718.304(b). Furthermore, there is no newly submitted CT scan evidence for consideration pursuant to 20 C.F.R. §§718.304(c) and 725.309.

mine employment and was entitled to the disease causation presumption at 20 C.F.R. §718.203. *Id*.

Reviewing the merits of the claim, the administrative law judge noted that the Board affirmed a finding of simple pneumoconiosis made by Administrative Law Judge Pamela Lakes Wood on December 3, 1997. Decision and Order at 17. The administrative law judge then stated:

> Dr. Wheeler and Dr. Scott thought the masses could be tuberculosis, granulomas, metastases, or histoplasmosis; Dr. Ahmed and Dr. Barrett identified granulomas. Dr. Alexander and Dr. Aycoth felt that cancer could not be ruled out. I find that these suggestions about etiology of the acknowledged masses in [claimant's] lungs are, as discussed above, speculative and equivocal, and unsupported by any other medical evidence of record. Moreover, to the extent that these physicians failed to acknowledge the presence of simple pneumoconiosis, they are inconsistent with previous findings in this case.

Id. at 17-18. The administrative law judge concluded that "[t]he medical evidence in connection with the previous claim contained [] x-rays and CT scans that showed the development of a mass or density in [claimant's] lungs, consistent with the newer medical evidence submitted in this claim." *Id.* at 18. Thus, the administrative law judge found that claimant "met the requirements as set out by the Court in *Scarbro* and that [employer] has not met the burden imposed on it by the Court in *Scarbro* to affirmatively establish that the opacity is due to a process other than pneumoconiosis." *Id*. Thus, the administrative law judge found that claimant was entitled to invocation of the irrebuttable presumption.

Initially, we note that the administrative law judge erred in shifting the burden in this case to employer to prove that claimant does not have complicated pneumoconiosis. Specifically, the administrative law judge erred when she stated that, once evidence was submitted to show a mass or opacity in claimant's lung that measured greater than one centimeter, the burden shifted to employer to affirmatively establish either the absence of large opacities or that the large opacities were not related to pneumoconiosis or coal dust exposure. The administrative law judge's analysis contravenes the principle set forth in *Lester*, that "claimant retains the burden of proving" the existence of complicated pneumoconiosis pursuant to Section 718.304. *Lester*, 993 F.2d at 145-46, 17 BLR at 2-117-18 (4th Cir. 1993); *Clinchfield Coal Co. v. Lambert*, No. 06-1154 (4th Cir. Nov. 17, 2006) (unpub.)

We also agree with employer that the administrative law judge failed to explain how she resolved the conflict in the x-ray evidence, erred in her treatment of Dr.

Wheeler's opinion, and failed to explain the basis for her findings in accordance with the APA. The administrative law judge discredited Dr. Wheeler's negative readings for complicated pneumoconiosis, as being equivocal and speculative, because "he did not offer any additional information to support his opinion that [claimant's] x-rays showed granulomas or cancer, instead of pneumoconiosis." Decision and Order at 16. However, by requiring employer's experts to designate a precise etiology for the masses seen on x-ray, the administrative law judge once again shifted the burden of proof to employer to establish the absence of complicated pneumoconiosis. *See Lester*, 993 F.2d at 1146, 17 BLR at 2-118. 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. *Id.*; *see also Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994). Moreover, in rejecting, as speculative and equivocal, the x-ray interpretations submitted in conjunction with claimant's prior claim, which also indentified granulomas, the administrative law judge has improperly substituted her opinion for that of the medical experts. *See Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986); Decision and Order at 17-18.

Furthermore, employer is correct that the administrative law judge erred in treating Dr. Wheeler's identification of a mass, greater than one centimeter, as being supportive of a finding of complicated pneumoconiosis at Section 718.304. Dr. Wheeler made an unequivocal diagnosis, on the ILO classification sheet, that there were no parenchymal abnormalities consistent with pneumoconiosis on the x-rays he reviewed. Director's Exhibit 16, Employer's Exhibit 4. In the absence of a diagnosis of pneumoconiosis with a Category A, B, or C opacity, a physician's x-ray interpretation on an ILO form that notes a mass that is greater than one centimeter in the "Comments" section, does not support a finding of complicated pneumoconiosis pursuant to Section 718.304(a). 20 C.F.R. §718.304(a). Additionally, contrary to the administrative law judge's findings, the Board's prior affirmance of Judge Wood's determination that claimant established the existence of simple pneumoconiosis in his prior claim, is not binding in this subsequent claim, as benefits were previously denied and employer had no burden to contest the finding of pneumoconiosis in the prior claim. *See Reigh v. Director, OWCP*, 20 BLR 1-44 (1996), *modifying on recon.*, 19 BLR 1-64 (1995); [*L. G.*] *v. Dominion Coal Corp.*, BRB No. 98-0531 BLA (Jan. 5, 1999) (unpub.).

Employer also correctly asserts that the administrative law judge erred in applying an inconsistent standard in assessing the credibility of the evidence she weighed under Section 718.304(c). *See Wright v. Director, OWCP*, 7 BLR 1-475 (1984); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984). The administrative law judge found that Dr. Rasmussen's diagnosis of complicated pneumoconiosis was credible because it was supported by his x-ray interpretation. However, because the administrative law judge has not properly resolved the conflict in the x-ray evidence, we vacate the administrative law

judge's findings pursuant to Section 718.304(c), as her credibility findings were influenced by her consideration of the x-ray evidence. The administrative law judge also erred in rejecting the opinions of Drs. Tuteur and Castle, that claimant does not have complicated pneumoconiosis, because she found that they had not reviewed certain positive x-rays for complicated pneumoconiosis. As noted by employer, however, the administrative law judge did not similarly question the credibility of Dr. Rasmussen's opinion, even though Dr. Rasmussen likewise did not review other x-ray readings in the record that conflicted with his interpretation. On remand, the administrative law judge is instructed to apply a consistent standard in determining the weight to accord to the conflicting medical opinions as to the existence of complicated pneumoconiosis.[8]

Finally, employer correctly asserts that the administrative law judge did not explain the basis for her conclusion that the CT scan evidence from the prior claim supported her finding of complicated pneumoconiosis. The record contains four readings of a CT scans dated April 4, 2003. Director's Exhibit 1. The technician, who performed the April 4, 2003 CT scan, noted that several lesions "might be related to lung disease" but he also stated that he could not rule out cancer. *Id*. Dr. Aycoth read the August 29, 2003 CT scan as showing Category A large opacities, but he could not rule out lung cancer. *Id*. Dr. Hayes found a density which appeared to be calcified but he could not exclude an enhancing lesion of pneumoconiosis. *Id*. Dr. Wheeler read the April 4, 2003 CT scan as negative for complicated pneumoconiosis. *Id*. The administrative law judge is instructed to explain on remand the basis for her conclusion that the medical opinions and CT scan evidence support a finding of complicated pneumoconiosis. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

To summarize, we vacate the administrative law judge's findings pursuant to Sections 718.304 and 725.309. We instruct the administrative law judge to reconsider,

[8] We agree with employer that the administrative law judge erred in stating that "Dr. Castle chose to avoid any discussion" of the radiographic evidence and that he did not explain the basis for his determination that claimant does not have complicated pneumoconiosis. Decision and Order at 15; *see Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). Contrary to the administrative law judge's characterization of his opinion, Dr. Castle read the December 12, 2006 x-ray as positive for simple pneumoconiosis, but as negative for complicated pneumoconiosis. Director's Exhibit 13. In addition, Dr. Castle specifically discussed the x-ray evidence, as he described how there has been no radiographic change in claimant's condition between May 2004, when he first examined claimant, and December 12, 2006. *Id*. Dr. Castle also cited normal arterial blood gas studies and normal pulmonary function studies to support his opinion that claimant does not have complicated pneumoconiosis. Employer's Exhibit 5. Therefore, on remand, the administrative law judge must properly consider Dr. Castle's opinion pursuant to 20 C.F.R. §718.304(c).

on remand, 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 Section 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). *See Blankenship*, 177 F.3d at 243, 22 BLR at 2-561. She must then 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 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* at 16 BLR 1-33-34. The administrative law judge must also resolve, specifically, the conflict in the newly submitted x-ray readings as to whether there are any Category A, B, or C opacities of complicated pneumoconiosis pursuant to Sections 718.304(a). In determining the weight to accord to the conflicting medical evidence pursuant to Section 718.304(c), 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).

In rendering her decision on remand, 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. *See Wojtowicz*, 12 BLR at 1-165. If, on remand, the administrative law judge finds that the newly submitted evidence is sufficient to establish complicated pneumoconiosis pursuant to Section 718.304, she may 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 complicated 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).

Lastly, if the administrative law judge concludes on remand that claimant is entitled to benefits, she must make a finding as to the date from which employer is liable for the payment of benefits. If the award of benefits in this case is based upon claimant's invocation of the irrebuttable presumption set forth in Section 718.304, the date for commencement of benefits is determined by the date of onset, i.e., the month in which the existence of complicated pneumoconiosis was established, based upon the evidence in the subsequent claim. 20 C.F.R. §725.503(b); *see Williams v. Director, OWCP*, 13 BLR 1-28 (1989). If the date of onset is not ascertainable, then benefits commence in the

month in which the subsequent claim was filed. 20 C.F.R. §725.503(b); *Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986); *Gardner v. Consolidation Coal Co.*, 12 BLR 1-184 (1989).

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

SO ORDERED.

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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