U.S. Department of Labor

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

BRB No. 17-0016 BLA

RANIE FAYE FUGATE and TROY RAY NEACE (Co-administrators of, and on behalf of, the Estate of TROY P. NEACE)	)	
Claimant-Respondent	)	
v.	)	
ARCH ON THE NORTH FORK, INCORPORATED	)	DATE ISSUED: 10/19/2017
and	)	
ARCH COAL, INCORPORATED through UNDERWRITER SAFETY AND CLAIMS	)	
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 William Dorsey, Administrative Law Judge, United States Department of Labor.

James D. Holiday, Hazard, Kentucky, for claimant.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2013-BLA-05267) of Administrative Law Judge William Dorsey, rendered on a subsequent miner's claim[1] filed on June 29, 2011, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge determined that claimant established the existence of complicated pneumoconiosis and invoked the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. The administrative law judge further found that claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.[2] Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that the miner established the existence of complicated pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response unless specifically requested to do so by the Board.

[1] The miner filed his first claim for benefits on November 14, 2003, which the district director denied on March 9, 2004. Director's Exhibit 1. After a hearing was conducted at the miner's request, Administrative Law Judge Ralph A. Romano denied benefits in a Decision and Order issued on July 24, 2006, finding that the miner did not establish total disability. *Id.* The miner took no further action until he filed the current subsequent claim. Director's Exhibit 2. The miner died on February 26, 2103, while his claim was still pending. Employer's Exhibit 1. His daughter and son (hereinafter collectively referred to as "claimant") are continuing to pursue this claim on behalf of his estate.

[2] When 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(c); *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(c)(3). The miner's prior claim was denied because he failed to establish total disability. Director's Exhibit 1. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing total disability. 20 C.F.R. §725.309(c)(3), (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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc*., 380 U.S. 359 (1965).

Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be 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, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The administrative law judge must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b), and (c), before determining whether claimant has invoked the irrebuttable presumption. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89, 21 BLR 2-615, 2-626-29 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

I. The X-ray Evidence

The administrative law judge considered three readings of an x-ray dated August 10, 2011 and three readings of an x-ray dated June 21, 2012. Decision and Order at 22. Dr. Baker, a B reader, and Dr. Alexander, dually-qualified as a Board-certified radiologist and B reader, read the August 10, 2011 x-ray as positive for complicated pneumoconiosis, Category A. Director's Exhibits 9, 12. Dr. Tarver, who is also a dually-qualified radiologist, identified a Category A opacity but noted the "possibility" that the miner had lung cancer.[4] Employer's Exhibit 2. Drs. Tarver, Seaman and Alexander, all dually-qualified radiologists, read the June 21, 2012 x-ray as containing a Category A opacity consistent with pneumoconiosis. Director's Exhibit 14-2;

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

[4] On the ILO form for the August 10, 2011 x-ray, Dr. Tarver indicated that the x-ray findings were "consistent with complicated coal workers' pneumoconiosis versus simple coal workers' pneumoconiosis with a right upper lobe mass. The right upper lobe [two centimeter] mass could represent lung cancer." Employer's Exhibit 2.

Employer's Exhibit 3-4. In the "other abnormalities" section of the ILO form, Dr. Tarver marked "yes" and identified "ca" for cancer. Employer's Exhibit 3. Dr. Tarver explained:

> The right upper lobe opacity has increased in size since the prior exam of 08-10-11, and *could* represent lung cancer. . . .
>
> Findings consistent with *possible* coal worker's pneumoconiosis with a right upper lobe mass. In comparing the two radiographs of 08-10-11 and 06-21-12 together, the patient most *likely* has *simple* coal worker's pneumoconiosis and right upper lobe cancer. Findings on CT scan would be helpful for further characterization.

Employer's Exhibit 3 (emphasis added). Dr. Seaman identified "ca" for cancer in the "other abnormalities" section and noted: "Radiographic findings consistent with coal worker's pneumoconiosis. The large opacity in the right upper zone *could* represent a large opacity of pneumoconiosis *versus* a lung cancer." Employer's Exhibit 4 (emphasis added). In the "comments" section of the ILO form, Dr. Alexander wrote: "Ill-defined 30 x 20 mm large opacity in right upper zone, [consistent with] Category A complicated [coal workers' pneumoconiosis (CWP)], *but other disease should be excluded*." Director's Exhibit 14-2 (emphasis added).

The administrative law judge reviewed the x-ray evidence in detail, noting the comments made on the ILO forms. Decision and Order at 8-9, 22. The administrative law judge determined that the August 10, 2011 x-ray is positive for complicated pneumoconiosis as it "was interpreted as positive by two readers with the highest credentials." *Id*. at 22. He further stated, "[a]lthough [] Dr. Tarver's x-ray included the possibility that the [miner] had another disease process, such as lung cancer, he stated that the x-ray was consistent with a finding of complicated pneumoconiosis." *Id*.; Employer's Exhibit 2. The administrative law judge also found that the June 21, 2012 x-ray is positive for complicated pneumoconiosis, despite "some equivocation" in the findings of a Category A large opacity by Drs. Tarver, Seaman and Alexander. Decision and Order at 22; Director's Exhibit 14-2; Employer's Exhibits 3, 4. Based on these findings, the administrative law judge concluded that claimant established the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 22.

Employer argues that the administrative law judge failed to adequately explain why he credited the x-ray readings by Drs. Alexander and Seaman of the June 21, 2012 x-ray as positive for complicated pneumoconiosis. This contention has merit.

When considering the June 21, 2012 x-ray, the administrative law judge acknowledged Dr. Alexander's comment that "other disease[s] should be excluded" and

Dr. Seaman's comment that the large opacity "could" represent pneumoconiosis. Decision and Order at 8-9, 22, *quoting* Director's Exhibit 14-2; Employer's Exhibit 4. However, the administrative law judge did not indicate how he resolved the conflict between his finding that the physicians' comments reflect "some equivocation" in their identification of a Category A large opacity on the June 21, 2012 x-ray, and his finding that their readings are positive for complicated pneumoconiosis. Decision and Order at 22. In addition, the administrative law judge did not explain how Dr. Seaman's comment, which the administrative law judge summarized as "consistent with coal worker's pneumoconiosis with either a large opacity *or* lung cancer" supports a finding of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). Decision and Order at 22 (emphasis added). Similarly, the administrative law judge did not explain how the statement by Dr. Alexander that he detected a large opacity consistent with "category A complicated CWP, but *other diseases should be excluded*," constituted a positive reading for complicated pneumoconiosis. Director's Exhibit 14-2 (emphasis added). Because the administrative law judge failed to adequately identify the bases for his findings, as required by the Administrative Procedure Act (APA),[5] we vacate his determinations that the June 21, 2012 x-ray is positive for complicated pneumoconiosis and that claimant established the existence of complicated pneumoconiosis, based on the x-ray evidence at 20 C.F.R. §718.304(a). *See Gray*, 176 F.3d at 388-89, 21 BLR at 2-626-29; *Melnick*, 16 at 1-37.

II. The Other Medical Evidence

Relevant to 20 C.F.R. §718.304(c),[6] the administrative law judge considered the medical opinions of Drs. Baker and Jarboe, CT scan evidence, and treatment records dated from October 1, 2012 to February 25, 2013, which include x-ray readings and physicians' progress notes. Decision and Order at 22-24.

[5] The Administrative Procedure Act requires that every adjudicatory decision 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 30 U.S.C. §932(a).

[6] The record does not contain any biopsy or autopsy evidence relevant to 20 C.F.R. §718.304(b).

A. Medical Opinions

Dr. Baker concluded that the miner had complicated pneumoconiosis based on the chest x-ray evidence. Director's Exhibit 9. Dr. Jarboe stated that the miner did not have legal pneumoconiosis but did not provide an opinion as to the existence of complicated pneumoconiosis. Director's Exhibit 10. The administrative law judge gave "full weight" to Dr. Baker's opinion because it "accords with my findings as to the weight of the radiological evidence." Decision and Order at 23. In contrast, he determined that Dr. Jarboe's report "is not probative of the ultimate issue in this case, namely the existence of complicated pneumoconiosis." *Id*. The administrative law judge therefore concluded that "the weight of the probative medical opinion evidence favors a finding of complicated pneumoconiosis." *Id*.

We affirm the administrative law judge's finding that Dr. Jarboe's opinion is not relevant to whether the miner had complicated pneumoconiosis as it is rational and supported by substantial evidence. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002). However, because we have vacated the administrative law judge's finding that the x-ray evidence is sufficient to establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(a), we must vacate the administrative law judge's crediting of Dr. Baker's medical opinion as supporting a finding of complicated pneumoconiosis because the physician's diagnosis of complicated pneumoconiosis accorded with the x-ray evidence.[7]

B. CT Scan Evidence

Dr. Tarver read a CT scan dated August 15, 2011[8] as positive for lung cancer and negative for simple or complicated pneumoconiosis. Employer's Exhibits 5, 6. The administrative law judge declined to give Dr. Tarver's reading controlling weight because the June 21, 2012 x-ray, which the administrative law judge determined was positive for complicated pneumoconiosis, was more recent by "about ten months." Decision and

[7] Additionally, we note that a medical opinion of clinical pneumoconiosis based on an x-ray reading and a history of coal dust exposure is not considered a reasoned medical opinion, as it merely restates the x-ray evidence. *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (en banc); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

[8] The CT scan was obtained on August 15, 2011, as correctly noted by the administrative law judge in his summary of the treatment records, not on August 10, 2011, as noted in his analysis of the CT scan evidence. Decision and Order at 22, 15 n.66; Employer's Exhibit 7 at 40.

Order at 23. The administrative law judge concluded that the CT scan evidence "does not necessarily negate the positive chest x-ray findings. Considering all of the radiological evidence on the whole, I find that it supports a finding of complicated pneumoconiosis, category A." *Id*.

Employer contends that the administrative law judge erred in applying the "most recent evidence" rationale to credit the June 21, 2012 x-ray over Dr. Tarver's reading of the August 15, 2011 CT scan, based on a gap of "about ten months" between them. Employer's Brief in Support of Petition for Review at 13; Decision and Order at 23. Employer also argues that the administrative law judge neglected to consider a reading in the treatment records by Dr. Blount of the August 15, 2011 CT scan, which corroborates Dr. Tarver's reading. Director's Exhibit 7 at 40.

Because we have vacated the administrative law judge's finding that the June 12, 2012 x-ray is positive for complicated pneumoconiosis, we also vacate the administrative law judge's determination that the positive x-ray evidence outweighed Dr. Tarver's negative reading of the August 15, 2011 CT scan. We also agree with employer that the administrative law judge erred in relying on its recency to give greater weight to the positive June 21, 2012 x-ray over Dr. Tarver's negative reading of the August 15, 2011 CT scan. The United States Court of Appeals for the Sixth Circuit, which has appellate jurisdiction in this case, has indicated that it does not approve of the application of the "later is better" rule in cases where conflicts in the x-ray evidence cannot be reconciled by reference to its chronological order. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319, 17 BLR 2-77, 2-84 (6th Cir. 1993), *citing Adkins v. Director, OWCP*, 958 F.2d 49, 51-52, 16 BLR 2-61, 2-64-65 (4th Cir. 1992). The administrative law judge identified the issue for resolution in this case as "whether the mass in [claimant's] right upper lung zone represented complicated coal workers' pneumoconiosis or lung cancer." Without additional explanation from the administrative law judge, we do not see how the fact that "about ten months" elapsed between the August 15, 2011 CT scan and the June 21, 2012 x-ray is relevant to resolving the dispute as to which disease created the large opacity in the upper lobe of claimant's right lung. Decision and Order at 23. In addition, employer asserts correctly that the administrative law judge did not address the reading of the August 15, 2011 CT scan in the treatment record wherein Dr. Blount indicated that the scan was "highly suspicious for a primary lung carcinoma."[9] Director's Exhibit 7 at 40. Because the administrative law judge failed to properly weigh Dr. Tarver's CT scan reading, and failed to consider all relevant CT scan evidence, we vacate his finding that

[9] The administrative law judge noted Dr. Blount's CT scan reading in his summary of the treatment records, but he did not consider it with Dr. Tarver's reading or the other evidence relevant to the existence of complicated pneumoconiosis. Decision and Order at 15, 24; Director's Exhibit 7 at 40.

this evidence does not negate the existence of complicated pneumoconiosis, as established by the x-ray evidence at 20 C.F.R. §718.304(a).[10] *See McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact-finder's failure to discuss relevant evidence requires remand).

C. Treatment Record X-ray Readings and Medical Reports

The administrative law judge determined that although there are diagnoses of lung cancer in the miner's treatment records, and lung cancer is listed on the miner's death certificate, "the probative value of these records is limited" because they "never mention [the miner's] coal mine employment or chronic dust exposure." Decision and Order at 24. Based on this observation, the administrative law judge reasoned that it is unclear whether the treating physicians considered a diagnosis of a coal dust-induced lung disease like complicated pneumoconiosis. *Id*. The administrative law judge also noted that "a number of the [miner's] treatment records and hospitalization records make only a tentative diagnosis of lung cancer." *Id*. He therefore concluded that the miner's treatment records "do not outweigh the possibility that the [miner] had complicated pneumoconiosis." *Id*.

Employer alleges that in rendering his finding, the administrative law judge omitted relevant x-ray readings from consideration. Employer also argues that the administrative law judge mischaracterized the treatment records as "tentative" in their diagnoses of lung cancer, and omitted relevant evidence in the form of Dr. Burnette's treatment record medical reports, in which the physician unequivocally diagnosed "malignancy" and "end-stage lung cancer." Employer's Brief in Support of Petition for Review at 10, *quoting* Decision and Order at 24; Employer's Exhibit 7 at 112-114, 117, 119, 121, 125-134, 139, 142-147, 149, 164-165, 170, 172-173, 176, 191-193. In addition, employer challenges the administrative law judge's discrediting of the treatment record medical reports because the physicians were unaware of the miner's history of coal dust exposure and did not consider a diagnosis of complicated pneumoconiosis. Employer's contentions have merit, in part.

As employer maintains, the administrative law judge did not address the treatment record readings of x-rays dated December 5, 2012 and January 29, 2013, in which Dr. Blount indicated that both films are consistent with "primary lung carcinoma." Employer's Exhibit 7 at 125, 134. We also agree with employer that the administrative

[10] Further, as discussed *infra*, employer correctly points out that there are treatment x-rays in the record which were made later than the chest x-ray evidence credited by the administrative law judge. Those later x-rays were read as "consistent with a known primary lung carcinoma." Employer's Exhibit 7 at 125, 134.

law judge noted that "*a number* of the [miner's] treatment records and hospitalization records make only a tentative diagnosis of lung cancer," without explaining how he resolved the conflict between those records and the records alleged by employer to contain unequivocal diagnoses of the disease. Decision and Order at 24 (emphasis added); *see* Employer's Exhibit 7 at 131-132, 139-147, 164-166, 168-176, 191-193.

In addition, the administrative law judge failed to address the treatment record reports of the miner's primary care physician, Dr. Burnette. Dr. Burnette reported in numerous progress notes that the miner had a malignancy in the right upper lobe and that he suffered from "end stage lung cancer." Employer's Exhibit 7 at 112-127, 131. After Dr. Blount read the January 29, 2013 x-ray as unchanged from the December 5, 2012 x-ray and "consistent with known carcinoma," Dr. Burnette's notes from January and February of 2013 included references to "end stage lung cancer right upper lobe" and "lung cancer" in the assessment and/or diagnosis section of the notes. Employer's Exhibit 7 at 131-132, 139-147, 164-166, 168-176, 191-193. However, contrary to employer's allegation, it is within the discretion of an administrative law judge to consider knowledge of the miner's history of coal dust exposure, and the extent to which a diagnosis of complicated pneumoconiosis was addressed, as relevant factors in assigning probative weight to the treatment record medical reports. 20 C.F.R. §718.104(d)(5) ("the weight given to the opinion of a miner's treating physician shall . . . be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole."); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-646 (6th Cir. 2003) (the opinions of treating physicians "get the deference they deserve based on their power to persuade.").

Because the administrative law judge failed to resolve material conflicts in the evidence and failed to address relevant evidence, we vacate his finding that the diagnoses of lung cancer in the treatment records are tentative and do not outweigh the evidence supportive of a finding of complicated pneumoconiosis. *See Wojtowicz*, 12 BLR at 1-162; *McCune*, 6 BLR at 1-998. We also vacate his findings that claimant established the existence of complicated pneumoconiosis by a preponderance of the evidence as a whole, and successfully invoked the irrebuttable presumption of total disability due to pneumoconiosis under 20 C.F.R. §718.304. We further vacate the administrative law judge's determinations that claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309, and that claimant is entitled to the presumption that the complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b).

III. Remand Instructions

On remand, the administrative law judge must first reconsider the x-ray readings by Drs. Seaman and Alexander of the film dated June 21, 2012, pursuant to 20 C.F.R.

§718.304(a). Director's Exhibit 14-2; Employer's Exhibit 4. The administrative law judge must give a reasoned explanation of his findings as to the probative value of this evidence in light of the statements in the physicians' readings. He is also required to reconsider whether the June 21, 2012 x-ray, when weighed with the August 10, 2011 x-ray would, absent other evidence to the contrary, be sufficient to establish the existence of complicated pneumoconiosis.

The administrative law judge must then reconsider the "other evidence" relevant to 20 C.F.R. §718.304(c). The administrative law judge is required to reconsider Dr. Baker's medical opinion diagnosing complicated pneumoconiosis in light of his finding as to whether the x-ray evidence is sufficient to establish complicated pneumoconiosis. Director's Exhibit 9. The administrative law judge must also reconsider the CT scan evidence by first determining whether employer has demonstrated that CT scans are medically acceptable and relevant to establishing or refuting entitlement to benefits, as required by 20 C.F.R. §718.107.[11] *See Webber v. Peabody Coal Co*., 23 BLR 1-123, 1-132-33 (2006) (en banc) (Boggs, J., concurring), *aff'd on recon*., 24 BLR 1-1 (2007) (en banc). If the administrative law judge finds that 20 C.F.R. §718.107 has been satisfied, he must reconsider Dr. Tarver's reading of the August 15, 2011 CT scan, along with Dr. Blount's interpretation, and render a finding as to whether this scan is positive, negative, or inconclusive for the existence of complicated pneumoconiosis. Director's Exhibit 7 at 40; Employer's Exhibit 6.

With respect to the x-ray evidence in the treatment records, the administrative law judge is required to consider Dr. Blount's readings of the x-rays dated December 5, 2012 and January 29, 2013, and determine their probative value.[12] Employer's Exhibit 7 at

[11] Dr. Tarver stated:

> CT scan may be useful in confirming or denying the presence of simple coal workers[']pneumoconiosis, as well as documenting the presence of complicated coal worker's pneumoconiosis when not well[-]demonstrated on routine chest x-rays. This CT scan is of good quality, the interpretation of which is sufficient for evaluating the presence or absence of coal workers['] pneumoconiosis.

Employer's Exhibit 5.

[12] Contrary to employer's contention, although an administrative law judge may conclude that x-ray readings that are silent on the existence of pneumoconiosis are probative of its absence, he is not required to do so. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984). The significance of such x-ray evidence is a question committed to the administrative law judge in his role as trier-of-fact. *Id*.

125, 134. Although Dr. Blount's readings are not subject to the quality standards set forth at 20 C.F.R. §718.102, because they were not obtained for the purposes of litigation, the administrative law judge must assess whether they provide sufficient information to make a factual finding on the presence or absence of complicated pneumoconiosis. *See J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008); 65 Fed. Reg. 79,920, 79,929 (Dec. 20, 2000) (adjudicator may consider whether a film read for reasons unrelated to diagnosing the existence of pneumoconiosis reliably addresses the presence or absence of the disease). In addition, the administrative law judge must reconsider the medical reports in the treatment records, including those in which Dr. Burnette diagnosed terminal lung cancer, and render detailed findings as to their credibility on the nature of the miner's lung disease. Employer's Exhibit 7 at 131-132, 139-147, 164-166, 168-176, 191-193.

After rendering his findings as to the probative value of the different types of evidence at 20 C.F.R. §718.304(c), the administrative law judge is required to then weigh this evidence with the x-ray evidence at 20 C.F.R. §718.304(a), to determine whether claimant has established the existence of complicated pneumoconiosis by a preponderance of the evidence of record as a whole. *See Gray*, 176 F.3d at 388-89, 21 BLR at 2-626-29; *Melnick*, 16 BLR at 1-37. When doing so, the administrative law judge must reconsider the readings by Dr. Tarver of the August 10, 2011 and June 21, 2012 x-rays in light of the comments on his interpretation of the CT scan dated August 15, 2011.[13] If the administrative law judge finds that claimant has established the existence of complicated pneumoconiosis, he may reinstate his findings that claimant: invoked the irrebuttable presumption of total disability due to pneumoconiosis under 20 C.F.R. §718.304; demonstrated a change in an applicable condition of entitlement under 20 C.F.R. §725.309; established entitlement to the presumption that the miner's complicated pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b); and established the miner's entitlement to benefits.

Should the administrative law judge determine that claimant has not proven that the miner had complicated pneumoconiosis, the administrative law judge must reconsider entitlement to benefits under 20 C.F.R. Part 718, without invocation of the irrebuttable presumption under 20 C.F.R. §718.304. Finally, the administrative law judge is instructed to set forth his findings on remand in detail, including the underlying rationales, as required by the APA. *See Wojtowicz*, 12 BLR at 1-165.

[13] Dr. Tarver indicated that his interpretation of the August 15, 2011 CT scan clarified his readings of the August 10, 2011 and June 21, 2012 x-rays such that it was his opinion that the miner had right upper lobe lung cancer, rather than complicated pneumoconiosis. Employer's Exhibit 6.

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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge