BRB No. 10-0331 BLA

VAN PRINCE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	DATE ISSUED: 02/28/2011
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard J. Stayton, Inez, Kentucky, for claimant.

Richard A. Seid (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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

DOLDER, Chief Administrative Appeals Judge:

Claimant appeals the Decision and Order Denying Benefits (2009-BLA-5131) of Administrative Law Judge Richard A. Morgan rendered on a claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). The administrative law judge credited claimant with at least twenty-seven years of qualifying coal mine employment, based on the parties' stipulation, and adjudicated this claim, filed on February 7, 2008, pursuant to 20 C.F.R.

[1] Claimant filed an earlier claim on August 30, 2004, but subsequently withdrew the application. Director's Exhibit 1.

Part 718.[2] The administrative law judge determined that the claim was timely filed, but that the named responsible operator, Argus Energy WV, LLC (employer), was not properly designated as the responsible operator in this case.[3] The administrative law judge found that the weight of the evidence was sufficient to establish simple pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a), 718.203(b), but insufficient to establish complicated pneumoconiosis or total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.304, 718.204(b), (c). Accordingly, benefits were denied.

On appeal, claimant asserts that his due process rights have been violated by inclusion into the record of medical evidence submitted by employer, and contends that the Director, Office of Workers' Compensation Programs (the Director), failed to provide him with a credible pulmonary evaluation, as required pursuant to Section 413(b) of the Act, 30 U.S.C. §923(b), 20 C.F.R. §725.406(a). Claimant also challenges the administrative law judge's weighing of the medical evidence on the issues of complicated pneumoconiosis at 20 C.F.R. §718.304, and total respiratory disability at 20 C.F.R. §718.204(b).[4] The Director has filed a motion urging the Board to vacate the denial of benefits and remand the case for further consideration on the issues of complicated pneumoconiosis, total respiratory disability, and disability causation.[5]

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[2] Claimant and the designated responsible operator, Argus Energy WV, LLC (employer), were represented at the hearing. Employer withdrew the issues of simple pneumoconiosis and cause of pneumoconiosis as contested issues in this case. Hearing Transcript at 6.

[3] The Director, Office of Workers' Compensation Programs (the Director), agreed that liability for this claim now rests with the Black Lung Disability Trust Fund, and by Order dated June 30, 2010, the Board granted claimant's motion to dismiss employer as a party to this case. *See* 20 C.F.R. §725.465(b).

[4] We reject claimant's additional argument that the administrative law judge erred in failing to address the issue of legal pneumoconiosis, as the issues of simple pneumoconiosis and the cause of pneumoconiosis were withdrawn at the hearing, and the administrative law judge found that claimant met his burden of proof to establish simple pneumoconiosis through the x-ray and medical opinion evidence of record. Hearing Transcript at 6; Decision and Order at 14-15, 17-18.

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment, and his finding that the evidence was sufficient to establish the existence of simple pneumoconiosis pursuant to 20 C.F.R.§718.202, but insufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

By Order dated June 30, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148. *Prince v. Director, OWCP*, BRB No. 10-0331 BLA (June 30, 2010)(unpub. Order). This provision amended the Act with respect to the entitlement criteria for certain claims that were filed after January 1, 2005 and remained pending on March 23, 2010, the effective date of the amendments. In particular, Section 1556 reinstated the "15-year presumption" of total disability due to pneumoconiosis set forth in Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[6] Claimant and the Director have responded. The parties maintain that, in the event the Board vacates the administrative law judge's findings, it must remand this case for consideration of the impact of the recent amendments to the Act. If the rebuttable presumption is applicable, the Director asserts that the administrative law judge should allow the parties to proffer additional evidence, consistent with the evidentiary limitations set forth in 20 C.F.R. §725.414,[7] as application of the amended Section 411(c)(4) will alter the parties' burdens of proof and impose on the Director the obligation of showing either that claimant did not suffer from pneumoconiosis or that his total disability did not arise out of coal mine employment, in order to defeat entitlement.

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.[8] 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).

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[6] Section 411(c)(4) provides that if a miner had at least fifteen years of qualifying coal mine employment, and if the evidence establishes the presence of a totally disabling respiratory impairment, there is a rebuttable presumption of total disability due to pneumoconiosis or, relevant to a survivor's claim, death due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 199 (2010)(to be codified at 30 U.S.C. §921(c)(4)).

[7] A showing of "good cause" is necessary in the event that a party seeks to convince the administrative law judge that the submission of additional medical evidence, either in the form of a documentary report or testimony, is justified. *See* 65 Fed. Reg. 79,993 (Dec. 20, 2000); 20 C.F.R. §725.456(b)(1).

[8] The law of the United States Court of Appeals for the Fourth Circuit is applicable, as claimant was employed in the coal mining industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 4.

We will first address claimant's argument that his due process rights have been violated by the admission into the record of the medical evidence submitted by employer. In this regard, claimant maintains that, because employer should not have been named as a party, any evidence it submitted should be stricken from the record and a new decision based upon the remaining evidence should issue. Claimant's Brief at 23. We disagree. The Director correctly notes that a change in the party liable for payment of benefits does not necessarily establish grounds for excluding evidence originally submitted by the dismissed party and, in the present case, claimant has failed to identify how he has been deprived of due process in light of the fact that he had the opportunity to develop evidence in rebuttal of employer's proffered evidence at each stage of the proceedings. *See Betty B Coal Company v. Director, OWCP* [*Stanley*], 194 F.3d 491, 22 BLR 2-1 (4th Cir. 1999); *York v. Benefits Review Board*, 819 F.2d 134, 10 BLR 2-99 (6th Cir. 1987); *Hardisty v. Director, OWCP*, 7 BLR 1-322 (1984) *aff'd* 776 F.2d 129, 8 BLR 2-72 (7th Cir. 1985). We therefore reject claimant's argument.

Claimant also contends that because the administrative law judge discounted Dr. Hussain's x-ray interpretation of complicated pneumoconiosis on the basis of his lack of qualification as a Board-certified radiologist or B reader, the Director violated his duty under Section 413(b) of the Act, 30 U.S.C. §923(b), 20 C.F.R. §725.406(a), to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim.[9] Claimant's Brief at 21-22. We disagree. The Director is required to provide miners with a complete pulmonary evaluation, not a dispositive one. The Department of Labor meets its statutory obligation under 30 U.S.C. §923(b) when it pays for an examining physician who performs all of the medical tests required by 20 C.F.R. §§718.101(a) and 725.406(a), addresses every element of entitlement, and specifically links each conclusion in his medical opinion to those medical tests. *Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 641-42, 24 BLR 2-199 (6th Cir. 2009); *Newman v. Director, OWCP*, 745 F.2d 1162, 1168 (8th Cir. 1984). As Dr. Hussain performed all

[9] A Board-certified radiologist is one who is certified as a radiologist or diagnostic roentgenologist by the American Board of Radiology, Inc., or the American Osteopathic Association. 20 C.F.R. §718.202(a)(ii)(C). The terms "A reader" and "B reader" refer to physicians who have demonstrated designated levels of proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Safety and Health. *See* 42 C.F.R. §37.51. In the present case, Dr. Hussain's curriculum vitae does not list his status as an A reader, Director's Exhibit 11, and the administrative law judge noted that there is "second-hand evidence that Dr. Hussain may be an A reader, but it is far from established." Decision and Order at 7 n. 17. Dr. Baker referred to Dr. Hussain as an A reader. Claimant's Exhibit 7.

necessary testing and addressed every element of entitlement, Director's Exhibit 11, the Director's statutory obligation is discharged.

Turning to the merits, claimant contends that the administrative law judge erred in finding that the weight of the evidence was insufficient to establish complicated pneumoconiosis at Section 718.304. Section 411(c)(3) of the Act, as implemented by Section 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 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. The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption. The administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis and determine whether the claimant has established the presence of complicated pneumoconiosis by a preponderance of the evidence. *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991)(*en banc*). The United States Court of Appeals for the Fourth Circuit 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 any other means under prong (C) would show 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; *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999).

Claimant asserts that the administrative law judge erred in his weighing of the x-ray evidence under Section 718.304(a). Citing *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992), claimant contends that the administrative law judge should have first determined whether each individual x-ray was positive or negative for complicated pneumoconiosis before weighing the x-ray evidence as a whole. Claimant further contends that the administrative law judge failed to consider Dr. Miller's November 1, 2009 letter repudiating the accuracy of his interpretation of the October 22, 2008 x-ray. Claimant's Brief at 11-19; Claimant's Exhibits 5-6. The Director agrees with claimant that the case should be remanded for the administrative law judge to weigh the interpretations of each x-ray individually before weighing the x-ray evidence as a whole. As Dr. Miller disavowed his negative x-ray reading in favor of his positive CT scan reading, the Director maintains that the administrative law judge erroneously failed to discount Dr. Miller's x-ray interpretation accordingly. The Director also challenges the administrative law judge's crediting of Dr. Wheeler's x-ray reading, asserting that the

administrative law judge failed to consider Dr. Wheeler's full rationale for interpreting the x-ray as negative; failed to provide any reason for crediting Dr. Wheeler's opinion; and failed to consider whether Dr. Wheeler's interpretation has any credibility given his failure to detect even simple pneumoconiosis by x-ray, which all other physicians found present. Director's Brief at 6-8. Some of these arguments have merit.

At Section 718.304(a), the record contains seven readings of two x-rays, dated March 5, 2008 and October 22, 2008. With regard to the March 5, 2008 x-ray, Dr. Hussain, a doctor with no particular radiological qualifications, found Category A (2/2) large opacities, Director's Exhibit 11, and Dr. Alexander, a dually-qualified B reader and Board-certified radiologist, found Category A (2/2) large opacities and noted a 10 mm large opacity in the right upper lung zone, anterior. Claimant's Exhibit 1. Dr. Wheeler, also dually qualified, read the film as negative (0/1) for simple pneumoconiosis and did not find any large opacities. Dr. Wheeler noted a 1cm mass in the right upper lung and a curved mass up to 1cm thick in the right lateral pleura compatible with conglomerate granulomatous disease, although he suggested that claimant should get a CT scan for a better evaluation.[10] Director's Exhibit 13. The October 22, 2008 x-ray was interpreted as having Category A (3/2) large opacities by Dr. Alexander, a dually-qualified physician, who indicated that "no definite large opacities are present in upper lung zones, but there is a 15 mm large opacity in the left lower mid lung zone which could indicate Category A complicated coal workers' pneumoconiosis." Claimant's Exhibit 3. The film was also read as (2/2), Category 0 large opacities by Dr. Miller, Claimant's Exhibit 5; and (1/2), Category 0 large opacities by Dr. Willis, Employer's Exhibit 3, both dually-qualified physicians. Dr. Zaldivar, a B reader, read the film as (3/2), Category 0 large opacities. Employer's Exhibit 2.

[10] Dr. Wheeler stated that:

> the nodules are unlikely to be coal workers' pneumoconiosis because all six lung zones are involved and they are mainly peripheral and probably involve pleura, which is typical of granulomatous disease. Masses in lateral RUL are not large opacities of coal workers' pneumoconiosis because they also are peripheral, at least one involves pleura which has no alveoli and profusion of background small nodules is low. Coal workers' pneumoconiosis typically gives symmetrical small nodular infiltrates in central mid and upper lungs. Finally, he is young. NIOSH and MSHA became active in coal mine safety in early 1970's presumably when he was beginning his career.

Director's Exhibit 13.

Pursuant to Section 718.304(a), the administrative law judge reviewed the seven interpretations of the two x-rays and noted that "only Drs. Hussain and Alexander found Category A opacities." Decision and Order at 7. The administrative law judge also noted that "while Dr. Wheeler's reading concerning the existence of simple pneumoconiosis was aberrant, he did explain that the 1 cm mass in the right upper lung was consistent with a conglomerate granulomatous mass, *i.e.*, histoplasmosis rather than TB." Decision and Order at 17; Director's Exhibit 13. Noting that "Dr. Alexander is the only dually qualified reader [who classified] a Category A opacity on both x-rays," the administrative law judge found that Dr. Alexander's complicated pneumoconiosis reading on the March 5, 2008 x-ray and the October 22, 2008 x-ray "is contrary to the readings of three other dually qualified readers, Drs. Wheeler, Miller, and Willis, finding only Category 0 opacities." Decision and Order at 17. After determining that "Dr. Zaldivar's B reading [of the October 22, 2008 x-ray] carries more weight than Dr. Hussain's reading [of the March 5, 2008 x-ray]" the administrative law judge concluded that "at best, this x-ray evidence of complicated pneumoconiosis is in equipoise," and that the evidence did not establish complicated pneumoconiosis. Decision and Order at 18.

As claimant and the Director maintain, the administrative law judge erred in failing to weigh the conflicting interpretations of each individual x-ray at Section 718.304(a), in order to determine whether the x-ray was positive or negative for complicated pneumoconiosis, before weighing the x-ray evidence as a whole. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 148-149, 11 BLR 2-1, 2-8 (1987). While the administrative law judge could properly accord greater weight to the interpretations by dually qualified readers, he failed to explain how he resolved the conflict between Dr. Alexander's finding of Category A opacities on the March 5, 2008 x-ray and Dr. Wheeler's finding of Category 0 opacities on the same x-ray, taking into account both doctors' rationales for their interpretations of the x-ray and Dr. Wheeler's failure to diagnose even simple pneumoconiosis. Claimant's Exhibit 1; Director's Exhibit 13. The administrative law judge also erred in comparing the qualifications of Drs. Zaldivar and Hussain, when the physicians provided interpretations of two different x-rays. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Consequently, we must vacate the administrative law judge's findings at Section 718.304(a), and remand this case for further consideration of the relevant evidence. On remand, the administrative law judge must determine whether each film is positive, negative, or inconclusive for complicated pneumoconiosis, and, after weighing the evidence, determine whether claimant has met his burden pursuant to prong (A). *Mullins*, 484 U.S. at 148-149, 11 BLR at 2-8; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101; *Wojtowicz*, 12 BLR at 1-165. Additionally, while we reject claimant's suggestion that Dr. Miller's positive CT scan reading and repudiation of his negative x-ray reading should convert Dr. Miller's x-ray reading from negative to positive for complicated pneumoconiosis, on remand the administrative law judge must explain how Dr. Miller's letter of November 1, 2009 affects the weight to be accorded to Dr. Miller's negative x-ray interpretation.

Claimant and the Director also challenge the administrative law judge's weighing of the CT scan and medical opinion evidence pursuant to Section 718.304(c). Specifically, claimant asserts that the administrative law judge erred in discounting the medical opinion of Dr. Baker on the basis of his professional qualifications. Claimant's Brief at 20-21. The Director maintains that the administrative law judge failed to make any finding as to whether the CT scan evidence was positive, negative, or inconclusive for complicated pneumoconiosis. The Director also contends that the administrative law judge failed to weigh the overall x-ray, CT scan, and medical opinion evidence of record together in order to determine whether claimant has established the presence of complicated pneumoconiosis by a preponderance of the evidence. Director's Brief at 7. The Director's arguments have merit.

Relevant to Section 718.304(c), the record contains two readings of a CT scan dated September 15, 2008, and medical opinions by Drs. Hussain, Baker, and Zaldivar. Claimant's Exhibits 3, 7; Director's Exhibit 11; Employer's Exhibits 2, 3. On September 20, 2009, Dr. Miller, a Board-certified radiologist and B reader, interpreted the CT scan as showing a 12 mm nodule in the right apex representing Category A complicated pneumoconiosis. Claimant's Exhibit 3. Dr. Willis, also a Board-certified radiologist and B reader, interpreted the CT scan as showing "diffuse round parenchymal opacities, more numerous in the upper lobes and small pleural-based plaques without significant calcification," but he did not find any large opacities. Employer's Exhibit 3. Dr. Hussain provided the Department of Labor pulmonary evaluation of claimant, and diagnosed pneumoconiosis based on exposure history, symptoms of wheezing, coughing, and dyspnea, abnormal pulmonary function study, hypoxemia, and advanced pneumoconiosis on x-ray.[11] Director's Exhibit 11. Dr. Baker reviewed various x-ray readings, medical opinions, CT scan interpretations, and medical records, and stated that "the majority of readings reflect the patient has at least a Category 2/2 to 3/2 coal workers' pneumoconiosis with an A opacity, suggesting pulmonary massive fibrosis," and that he "accept[ed] these readings as the most likely diagnostic finding." Claimant's Exhibit 7. Dr. Zaldivar examined claimant on October 22, 2008, reviewed Dr. Sheils's CT scan interpretation of September 15, 2008 as well as his own objective tests, including his x-ray interpretation of 3/2 pneumoconiosis with Size 0 large opacities, and diagnosed

[11] Dr. Hussain additionally diagnosed coronary artery disease (CAD) and atherosclerosis, and found that, although the pulmonary function study showed no impairment, claimant exhibited a marked, severe impairment on exercise, caused by coal dust exposure, that prevented him from performing work similar to his coal mine employment. Director's Exhibit 11.

simple pneumoconiosis and a mild restrictive pulmonary impairment resulting from claimant's previous coronary bypass surgery.[12] Employer's Exhibit 2.

In evaluating the evidence at Section 718.304(c), the administrative law judge found that Dr. Miller's CT scan interpretation, diagnosing a 12 mm nodule in the right apex representing Category A complicated pneumoconiosis, "further establishes at least simple clinical pneumoconiosis," and that "Dr. Miller's CT interpretation may be used to support a finding of complicated pneumoconiosis as there is a sufficient 'equivalency' determination." Decision and Order at 17; Claimant's Exhibit 3. The administrative law judge also concluded that Dr. Willis's interpretation of the CT scan, diagnosing diffuse round parenchymal opacities but no large opacities, was a diagnosis of simple coal workers' pneumoconiosis. Decision and Order at 17; Employer's Exhibit 3. In reviewing the medical opinion evidence, the administrative law judge first considered the relative qualifications of the physicians, and determined that Drs. Zaldivar and Hussain were "rank[ed]" equally, with "Dr. Baker only slightly less qualified due to the lack of reported experience dealing with black lung patients." Decision and Order at 16; Director's Exhibit 11; Claimant's Exhibit 7; Employer's Exhibit 2. The administrative law judge found that Dr. Hussain "based his complicated pneumoconiosis diagnosis largely on his A reading," Decision and Order at 17, and that Dr. Baker's opinion was unreasoned, as it was "essentially merely repeating the radiological readings" of other doctors. Decision and Order at 17; Claimant's Exhibit 7.

We find no merit in claimant's contention that the administrative law judge erred in discounting the consulting opinion of Dr. Baker at Section 718.304(c), as the administrative law judge permissibly determined that Dr. Baker's opinion, that claimant has at least a category 2/2 to 3/3 pneumoconiosis with an A opacity, was merely a restatement of the x-ray interpretations he reviewed and not an independent diagnosis of complicated pneumoconiosis. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); Decision and Order at 17; Claimant's Exhibit 7. However, the administrative law judge did not explain the weight, if any, he accorded to the conflicting CT scan evidence, nor did he indicate the weight to which Dr. Zaldivar's medical opinion was entitled on the issue of complicated pneumoconiosis, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C.

[12] Dr. Zaldivar also diagnosed severe hypertension, and did not perform exercise studies due to claimant's worsening symptoms of CAD and hypertension. He found a mild restriction of vital capacity and total lung capacity, normal resting blood gases, and a mild diffusion impairment. Dr. Zaldivar concluded that claimant's overall pulmonary impairment was mild and unrelated to his occupation, but that claimant had a severe impairment due to hypertension and chest pains associated with claimant's history of CAD. Employer's Exhibit 2.

§932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). *See Wojtowicz*, 12 BLR at 1-165. Consequently, we vacate the administrative law judge's findings at Section 718.304(c) and remand for further consideration of the CT scan and medical opinion evidence. In weighing the CT scan evidence at Section 718.304(c), the administrative law judge must take into consideration the equivalency requirement that an opacity appear as greater than one centimeter in diameter if seen on x-ray, and in weighing the medical opinion evidence, the administrative law judge must consider "the qualifications of the respective physicians, the explanation of their medical opinions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses." *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).

After determining whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, the administrative law judge must weigh together the evidence at Sections 718.304(a) and (c), before determining whether invocation of the irrebuttable presumption pursuant to Section 718.304 has been established. *See Lester*, 993 F.2d 1143, 17 BLR 2-114; *Melnick*, 16 BLR at 1-33-34.

Claimant and the Director next challenge the administrative law judge's finding that the evidence was insufficient to establish total respiratory disability at Section 718.204(b), arguing that the administrative law judge impermissibly discounted Dr. Hussain's opinion solely because the physician relied on nonqualifying pulmonary function study and arterial blood gas study results. Claimant's Brief at 22. The Director further asserts that the administrative law judge conflated the issues of total disability and disability causation, and failed to provide a valid reason for crediting the opinion of Dr. Zaldivar over that of Dr. Hussain. Director's Brief at 10-12. We agree. In evaluating the physicians' assessments of whether claimant had the respiratory capacity to perform his coal mine work, the administrative law judge discounted Dr. Hussain's opinion, that claimant had a marked impairment on exercise and was unable to perform the work related to coal mine employment, on the ground that "Dr. Hussain's results are contrary to the pulmonary function study (PFS) and arterial blood gas (ABG) study objective tests." Decision and Order at 20. However, the administrative law judge failed to provide sufficient discussion of the relevant evidence to enable us to determine whether he impermissibly discounted Dr. Hussain's opinion solely because it was based on objective tests that produced nonqualifying values, or whether he found the opinion to be unreasoned. Further, in crediting Dr. Zaldivar's opinion that claimant suffered only a mild respiratory impairment, the administrative law judge determined that the doctor integrated the most medical evidence; that his finding was consistent with the objective PFS and ABG results; and that, unlike Dr. Hussain, he discussed the impact of claimant's coronary artery disease and hypertension on claimant's pulmonary capacity. Decision and Order at 20. In so doing, the administrative law judge conflated the issues of total disability and disability causation, and he also failed to explain how Dr. Zaldivar's

"integrated" consideration of the medical evidence enhanced his credibility, particularly in light of Dr. Zaldivar's failure to conduct exercise studies. Consequently, we vacate the administrative law judge's findings at Section 718.204(b)(2)(iv) and instruct the administrative law judge on remand to reevaluate the medical opinion evidence and provide a rationale for his credibility determinations that comports with the requirements of the APA. *See Wojtowicz*, 12 BLR at 1-165. The administrative law judge must then weigh all relevant evidence together, like and unlike, and determine whether claimant has met his burden of establishing total respiratory disability pursuant to Section 718.204(b). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1- 236 (1987)(*en banc*).

As we have vacated the administrative law judge's findings on the issues of complicated pneumoconiosis and total respiratory disability, the administrative law judge, on remand, must consider the claim under the amended version of Section 411(c)(4) of the Act. If the administrative law judge finds that claimant has established invocation of the presumption at Section 411(c)(4), he should then consider whether the Director has satisfied his burden to rebut the presumption. On remand, the administrative law judge should allow for the submission of evidence by the parties to address the change in law. *See Harlan Bell Coal Co. v. Lamar*, 904 F.2d 1042, 1047-50, 14 BLR 2-1, 2-7-11 (6th Cir. 1990). Further, any additional evidence submitted must be consistent with the evidentiary limitations. 20 C.F.R. §725.414. If evidence exceeding those limitations is offered, it must be justified by a showing of good cause. 20 C.F.R. §725.456(b)(1).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

I concur.

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ROY P. SMITH
Administrative Appeals Judge

HALL, Administrative Appeals Judge, concurring and dissenting:

While I concur with my colleagues' decision in all other respects, I respectfully dissent from their holding that the Director met his obligation under Section 413(b) of the Act, 30 U.S.C. §923(b), 20 C.F.R. §725.406(a), to provide claimant with a complete and credible pulmonary evaluation sufficient to substantiate his claim. I am troubled by the Department's apparent practice of submitting x-ray readings by doctors lacking radiological credentials, when the Department's regulations require consideration of the readers' radiological qualifications where the x-rays are in conflict. 20 C.F.R. §718.202(a)(1). Under the facts of this case, as Dr. Hussain's *curriculum vitae* lists no radiological qualifications, his x-ray reading was properly discredited and, thus, his opinion does not satisfy the Director's duty to provide claimant with a complete pulmonary evaluation within the meaning of Section 413(b). *See Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *see also Cline v. Director, OWCP*, 917 F.2d 9, 14 BLR 2-102 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984). Consequently, I would remand this case for the Director to satisfy his statutory obligation by obtaining an x-ray interpretation by an appropriately qualified physician, and for readjudication of the merits of this claim.

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BETTY JEAN HALL
Administrative Appeals Judge