BRB No. 04-0779 BLA

ZANE CHILDRESS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED: 07/07/2005
	)	
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.

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Barry H. Joyner (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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 McGRANERY, Administrative Appeals Judges.

DOLDER, Chief Administrative Appeals Judge:

Employer appeals the Decision and Order Awarding Benefits (2003-BLA-0174) of Administrative Law Judge Linda S. Chapman on a 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). This case has been before the Board previously. Claimant originally filed a claim for black lung benefits on April 13, 1992. In his Decision and Order dated January 10, 1994, Administrative Law Judge Reno E. Bonfanti credited claimant with thirty-five years of coal mine employment and

adjudicated the claim pursuant to 20 C.F.R. Part 718. Judge Bonfanti found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), but insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied.

Claimant filed a petition for modification pursuant to 20 C.F.R. §725.310 on December 14, 1994. In a Decision and Order issued January 29, 1996, Administrative Law Judge Charles P. Rippey reviewed the evidence submitted by claimant in support of his request for modification of Judge Bonfanti's Decision and Order and determined that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, modification and benefits were denied.

Claimant appealed the denial of benefits to the Board and in *Childress v. Island Creek Kentucky Mining [sic]*, BRB No. 96-0726 BLA (May 30, 1997)(unpub.), the Board affirmed the denial of benefits. Director's Exhibit 103.

Claimant subsequently requested modification pursuant to 20 C.F.R. §725.310 on April 20, 1998. In reviewing this case on claimant's request for modification, Administrative Law Judge Jeffrey Tureck initially noted that claimant was seeking modification solely on the basis of a change in conditions and that claimant knowingly withdrew modification due to a mistake in a determination of fact as an issue. As Judges Bonfanti and Rippey had reached inconsistent findings regarding the existence of pneumoconiosis, but had both found that total disability was not established, Judge Tureck assumed a change in conditions was shown by evidence that claimant suffers from pneumoconiosis. Judge Tureck then considered all of the evidence of record, old and new, on the merits and found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4). Accordingly, benefits were denied.

Claimant appealed the denial of benefits to the Board and in *Childress v. Island Creek Coal Co.*, BRB No. 99-1324 BLA (October 31, 2000)(unpub.), the Board affirmed the denial of benefits. Director's Exhibit 132.

Claimant subsequently requested modification pursuant to 20 C.F.R. §725.310 on July 27, 2001. Following a hearing on claimant's request for modification, Administrative Law Judge Richard T. Stansell-Gamm issued a remand order, at claimant's request, to allow for additional medical development. On April 30, 2003, after the completion of such development, the case was returned to the Office of Administrative Law Judges for a hearing.

In a decision and Order dated June 17, 2004, currently before the Board, Administrative Law Judge Linda S. Chapman (the administrative law judge) credited

claimant with at least thirty-six years of coal mine employment and noted that the claim before her involved a request for modification, filed on July 27, 2001, pursuant to 20 C.F.R. §725.310. The administrative law judge found that the evidence of record established the existence of complicated pneumoconiosis and thus invocation of the irrebuttable presumption of total disability due to pneumoconiosis. Specifically, pursuant to Section 718.304(a), the administrative law judge considered twenty-five readings of six new chest x-rays, noting that one reading was classified unreadable U/R, one reading identified the presence of simple pneumoconiosis 1/1, one reading, by Dr. Pathak, a B-reader, identified simple pneumoconiosis 2/2 as well as category B large opacities, while the remaining twenty-two readings were negative for pneumoconiosis, but nonetheless showed evidence of large masses in the lungs.[1] The administrative law judge discounted the negative readings as "inconclusive and speculative" because the physicians excluded pneumoconiosis as an etiology for the large masses seen on claimant's x-rays, but did not identify a definite etiology for the masses. Decision and Order at 27. The administrative law judge noted that the record contained no evidence that claimant was diagnosed with tuberculosis or any of the other alternative etiologies, such as granulomatous disease, histoplasmosis, sarcoidosis or cancer, identified by the physicians who concluded that pneumoconiosis was absent. Decision and Order at 28. Pursuant to Section 718.304(c), the administrative law judge similarly discounted the negative readings of claimant's computerized tomography (CT) scans because the readers who reported that the scans were negative for pneumoconiosis identified abnormalities but did not assign a definite etiology for the abnormalities. The administrative law judge then stated that the remaining evidence, consisting of the medical opinions of Drs. Zaldivar, Jarboe, Morgan, Ghio and Dahhan, "is not relevant" to an analysis under Section 718.304(c), which is limited to "equivalent diagnostic results reached by other means," because these physicians did not personally review the x-rays or CT scans. Decision and Order at 27. The administrative law judge nevertheless discussed these opinions and found that the medical opinions diagnosing the absence of complicated pneumoconiosis were equivocal because they did not identify exactly what process caused the large opacities seen on x-ray and CT. Finally, the administrative law judge found that the x-ray and CT scan interpretations relied on by employer are inconclusive, and not affirmative evidence that the large masses are not there, or are due to another disease process. Decision and Order at 28. Therefore, *citing Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000), the administrative law judge concluded that Dr. Pathak's x-ray reading showing a category B large opacity did not "lose force" and was sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304(a), and, consequently, sufficient to establish a

[1] The record contains an additional reading, by Dr. Navani, classified as 1/1 simple pneumoconiosis, that was not considered by the administrative law judge. Director's Exhibit 138.

change in conditions pursuant to Section 725.310. The administrative law judge then reviewed all the evidence on the merits, according greatest weight to the more recent evidence of record given the progressivity of pneumoconiosis, and for the same reasons set forth above, again found the evidence sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304(a). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge applied an improper standard in weighing the conflicting x-ray evidence. Employer further asserts that the administrative law judge erred in her analysis of the medical opinions and CT scan evidence. Claimant has not submitted a response in this appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter agreeing with employer that the administrative law judge applied an improper standard to invoke the irrebuttable presumption of total disability at 20 C.F.R. §718.304.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.201, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes a finding of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Pursuant to Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a) and as implemented by 20 C.F.R. §725.310, a party may request modification of a denial on the grounds of a change in conditions or because of a mistake in a determination of fact. A petition for modification may be based on an allegation that the ultimate fact, disability due to pneumoconiosis, was mistakenly decided. *Jessee v. Director, OWCP*, 5 F.3d 723, 725, 18 BLR 2-26, 2-28 (4th Cir. 1993).

Section 411(c)(3)(A) of the Act, implemented by Section 718.304(a) 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)(A); 20 C.F.R. §718.304(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. In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(*en banc*). Additionally, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, 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 show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Scarbro*, 220 F.3d at 255, 22 BLR at 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).

Employer initially contends that the administrative law judge did not properly resolve the conflicting x-ray and CT scan evidence pursuant to Section 718.304(a) and (c). Specifically, employer alleges that the administrative law judge effectively shifted the burden to employer to disprove the existence of complicated pneumoconiosis upon claimant's introduction of one x-ray reading classified for the presence of large opacities. Employer's contention has merit.

The administrative law judge applied an incorrect standard in analyzing the x-ray and CT scan evidence. In Scarbro, the Fourth Circuit explained that where the x-ray evidence vividly displays the presence of large opacities, medical evidence under another prong of 30 U.S.C. §923(c) can undermine the positive x-rays only by affirmatively showing that the opacities are not there or are not what they seem to be.[2] *Scarbro*, 220

[2] In *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000), seven of eight readers of the most recent x-ray diagnosed large opacities. Here, by contrast, one reader diagnosed large opacities on claimant's February 24, 2003 x-ray while three readers classified the same x-ray as completely negative for any abnormalities consistent with the existence of pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 12. A July 5, 2001 x-ray was read once as positive for simple pneumoconiosis 1/1, and twice as negative for pneumoconiosis; a May 4, 2002 x-ray was read once as unreadable, once positive for simple pneumoconiosis 1/1, and four times as negative for pneumoconiosis; all five readings of an October 21, 2002 were negative for the existence of pneumoconiosis; all

F.3d at 256, 22 BLR at 2-101. The administrative law judge in this case relied on that language from Scarbro to require employer's medical experts to not only read claimant's x-rays as negative for large opacities or any form of pneumoconiosis, but also to ascertain a definite etiology for the large opacities identified by claimant's medical expert, in order to "affirmatively show that the opacities are not there or are not what they seem to be," and thus, cause claimant's positive x-ray to "lose force." Decision and Order at 28. Thus, the administrative law judge's requirement that employer "affirmatively show that the opacities [identified by Dr. Pathak] are not there or are not what they seem to be" by identifying a definite etiology for the abnormalities that were seen on the films, Decision and Order at 28, effectively required employer to disprove the existence of complicated pneumoconiosis once claimant submitted one positive reading under Section 718.304(a). The Fourth Circuit has emphasized, however, that "claimant retains the burden of proving the existence of the disease" complicated pneumoconiosis. *Lester*, 993 F.3d at 1146, 17 BLR at 2-118. In light of the foregoing, we vacate the administrative law judge's findings at Section 718.304(a) and (c) and remand this case for further consideration of the weight of the x-ray and CT scan evidence. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). On remand, the administrative law judge must first determine whether the relevant evidence in each category under Section 718.304(a)-(c) tends to establish the existence of complicated pneumoconiosis, and then must weigh the evidence at subsections (a), (b) and (c) together before determining whether invocation of the irrebuttable presumption pursuant to Section 718.304 has been established. *Lester*, 993 F.2d at 1143, 17 BLR at 2-114; *Melnick*, 16 BLR at 1-31.

Employer also argues that the administrative law judge erred in discrediting the x-ray interpretations in which the physicians attributed the large opacities in claimant's lungs to tuberculosis, histoplasmosis or sarcoidosis because they did not cite corroborating evidence in the record. Decision and Order at 28 n.8; Employer's Brief at 28. The Board has long held that the interpretation of the objective data is a medical determination for which an administrative law judge cannot substitute her own opinion. *See Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). Drs. Wheeler, Scott, Scatarige and Pendergrass, all dually qualified Board-certified radiologists and B-readers, and Drs. Hippensteel, Fino and Respher, all B-readers, each interpreted claimant's x-rays as revealing other abnormalities. Director's Exhibit 144; Employer's Exhibits 2-5, 12, 17, 157, 159. The fact that the record does not contain evidence regarding whether claimant suffered from tuberculosis, histoplasmosis or sarcoidosis does not necessarily undermine the interpretations of those physicians who found that the appearance of the abnormalities

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four readings of an April 9, 2002 x-ray were negative for pneumoconiosis; and all four readings of an April 24, 2003 x-ray were negative for the existence of pneumoconiosis. Director's Exhibit 144; Employer's Exhibits 2-5, 12, 17, 157, 159.

seen on claimant's x-rays is not consistent with pneumoconiosis. We vacate, therefore, the administrative law judge's findings with respect to these x-ray interpretations. On remand, the administrative law judge must reconsider this evidence.

Pursuant to Section 718.304(c), employer asserts that the administrative law judge erred in stating that the medical opinions of Drs. Zaldivar, Jarboe, Morgan, Dahhan and Ghio, were "not relevant" to an analysis under 718.304(c). While the administrative law judge did discuss this evidence, she discredited it as not dispositive on the issue of the etiology of the large opacities on claimant's x-rays. Decision and Order at 28. The administrative law judge's analysis, however, was affected by her improper consideration of the conflicting x-ray evidence pursuant to Section 718.304(a). Consequently, we vacate the administrative law judge's findings at Section 718.304(c). On remand, the administrative law judge must reconsider the additional rationale that Drs. Zaldivar, Jarboe, Morgan, Dahhan and Ghio provided for their opinions that claimant has an infections disease process rather than complicated pneumoconiosis and determine whether they are entitled to probative weight pursuant to Section 718.304(c). *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-34 (1991)(*en banc*).

Employer further asserts that the administrative law judge improperly discredited the reports of Drs. Dahhan, Morgan, Jarboe and Ghio on the ground that they did not review the x-ray or CT films and "offered opinions of the basis of the interpretations of other physicians." Employer's Brief at 21; Decision and Order at 28. Employer also asserts that in so doing, the administrative law judge also mischaracterized the opinions of Drs. Dahhan and Morgan, as they did personally review x-rays. Employer's Brief at 21. While, contrary to employer's arguments, Dr. Morgan only personally reviewed x-rays submitted prior to claimant's request for modification, employer is correct that Dr. Dahhan personally reviewed the May 4, 2002 x-ray. Director's Exhibit 144. In addition, in reweighing the evidence on remand, the administrative law judge should remain mindful that opinions of consulting or reviewing physicians may be considered relevant, especially where corroborated by examining physicians. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Grizzle v. Pickands Mather & Co./Chisolm Mines*, 994 F.2d 1093, 1096 (4th Cir. 1993); *Turner v. Director, OWCP*, 927 F.2d 778, 15 BLR 2-6 (4th Cir. 1991).

Employer also asserts that the administrative law judge failed to consider all of Dr. Fino's supplemental reports, and the rationale provided therein, and improperly discredited Drs. Fino and Jarboe for not providing a persuasive explanation for the cause of the large masses noted on x-rays. Employer's Brief at 21-23. Contrary to employer's argument, the administrative law judge did consider all of Dr. Fino's opinions and did not explicitly reject Dr. Fino's opinion for lack of rationale. However, as discussed above, the administrative law judge improperly discredited those physicians who did not diagnose complicated pneumoconiosis but did not offer a definitive alternative diagnosis,

and, therefore, must reweigh all of the medical opinion evidence pursuant to Section 718.304(c), including the opinions of Drs. Fino and Jarboe.

Employer's final contention is that the administrative law judge erred in according less weight to Dr. Repsher because his opinion, that claimant's mild chronic obstructive pulmonary disease is purely obstructive and therefore cannot be due to pneumoconiosis, is contrary to the Act, and because he relied on pulmonary function and blood gas study evidence to support his conclusion that claimant does not have pneumoconiosis, when these tests are not diagnostic of the disease. Employer's Brief at 27; Decision and Order at 26 n.7. Employer is correct that Dr. Repsher's opinion, that claimant has pure obstructive disease "which is typical of cigarette smoking induced COPD" and has no evidence of a restrictive component, "which would be characteristic of clinically significant coal workers' pneumoconiosis," is not necessarily hostile to the Act as it does not foreclose all possibility that pneumoconiosis can cause obstructive disease. *Lane v. Union Carbide Corp.*, 105 F.3d 166 (4th Cir. 1997); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337 (4th Cir. 1996); *see Warth v. Southern Ohio Coal Co.*, 60 F.3d 173 (4th Cir. 1995); Employer's Exhibit 8. Moreover, in his deposition Dr. Repsher specifically stated that coal dust exposure can cause obstructive impairment. Employer's Exhibit 21 at 16-17. In addition, as employer asserts, the Board has held that blood gas studies may be relevant to the existence of pneumoconiosis and for an administrative law judge to dismiss a physician's partial reliance on objective studies as irrelevant is to make an improper medical determination. *Marcum*, 11 BLR at 1-24 (1987); *Morgan v. Bethlehem Steel Corp.*, 7 BLR 1-226 (1984). However, contrary to employer's arguments, the administrative law judge did not explicitly accord Dr. Repsher less weight on these grounds, but rather found his opinion equivocal because he could not definitively state the etiology of the abnormalities seen on x-ray. Thus, a remand is not required based on employer's additional allegations of error regarding Dr. Repsher. Nonetheless, the administrative law judge must reweigh the opinion of Dr. Repsher together with the other relevant medical evidence at Section 718.304(c).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is vacated and the case is remanded to the administrative law judge for further proceedings 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

McGRANERY, Administrative Appeals Judge, concurring and dissenting:

I agree with the majority that the administrative law judge erred in finding the irrebuttable presumption invoked by Dr. Pathak's x-ray reading before weighing all of the x-ray evidence, and that she thereby appeared to put the burden of proof on employer. But I disagree with the majority's determination that the administrative law judge erred in her weighing of the individual x-ray readings.

It is the responsibility of the administrative law judge in this case to determine whether claimant is entitled to the irrebuttable presumption of total disability due to pneumoconiosis, pursuant to 20 C.F.R. §718.304. To do so, the administrative law judge must determine which of the various x-ray interpretations are credible. Contrary to the majority's statement, the administrative law judge is not substituting her own opinion or attempting to interpret the x-rays herself when she applies logic to assess the credibility of x-ray interpretations. It was entirely reasonable for her to reject the interpretations suggesting tuberculosis because "Claimant has no history of tuberculosis, or exposure to tuberculosis, and the tuberculosis test he recently underwent was negative." Decision and Order at 28. Similarly, the administrative law judge observed: "some [interpretations] suggest it could be histoplasmosis or sarcoidosis, but do not provide corroborating evidence. Nor is there any affirmative evidence that the claimant has cancer." Decision and Order at 28.

The majority cannot deny that the administrative law judge reasonably found the diagnoses of cancer, tuberculosis, histoplasmosis, pneumonia and sarcoidosis suspect, because there is no corroboration in the record of any of these diseases. The majority points out that each of these opinions which provided an interpretation of cancer, or tuberculosis or histoplasmosis also provided an interpretation of the abnormality as being inconsistent with pneumoconiosis. In the majority's view, the erroneous diagnosis of cancer, tuberculosis, etc., "does not necessarily undermine" the credibility of the diagnosis that the abnormality seen is not pneumoconiosis. By saying that the erroneous diagnosis "does not necessarily undermine…" the credibility of the interpretation of "not pneumoconiosis," the majority concedes that a reasonable person could find the credibility of the "not pneumoconiosis" interpretation undermined by the erroneous

diagnosis of cancer, tuberculosis, etc. That is what the administrative law judge found in the case at bar.

The administrative law judge was well aware of the readings "categorically exclude[ing] pneumoconiosis as the etiology for the masses…" appearing on x-ray; she found these opinions questionable in light of the doctors' failure to provide a credible, definitive diagnosis. Decision and Order at 27. Because these doctors had demonstrated that their judgment could not be trusted on what they believed the abnormalities to be, she reasonably concluded that there was no reason to trust their judgment on what they believed the abnormalities could not be. The record reflects that the administrative law judge properly discredited the x-ray interpretations: she was aware of the "not pneumoconiosis" diagnoses and reasonably found them undermined by the erroneous diagnoses of tuberculosis, cancer, etc.; and she found them less persuasive than the diagnosis of pneumoconiosis in this miner with over thirty-six years of coal mine employment. Although the majority holds that the administrative law judge abused her discretion in discrediting the x-ray interpretations, the majority does not explain how the administrative law judge erred since she reasonably discounted the x-ray interpretations of "not pneumoconiosis" because the doctors also provided interpretations of cancer, tuberculosis, histoplasmosis, which lacked any corroboration in the record, unlike the interpretations of pneumoconiosis.

In vacating the administrative law judge's discrediting of these x-ray interpretations, the majority has exceeded its statutory authority. 33 U.S.C. §921(b)(3). It is the administrative law judge's responsibility to "evaluate the evidence, weigh it, and draw his [her] own conclusions." *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997). Moreover, an administrative law judge "is not bound to accept the opinion or theory of any medical expert." *Underwood*, 105 F.3d at 949, 21 BLR at 2-28. In the case at bar, the administrative law judge reviewed all the evidence and rationally weighed it. Her crediting of x-ray interpretations finding pneumoconiosis over the interpretations finding no pneumoconiosis should be upheld. *See Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 342, 20 BLR 2-246, 2-257 (the court must defer to the administrative law judge's evaluation of the proper weight to accord conflicting medical opinions).

As to the remaining points, I concur in the majority's decision.

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REGINA C. McGRANERY
Administrative Appeals Judge