U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 21-0135 BLA

DONALD L. ADDISON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JEWELL RIDGE MINING CORPORATION	)	
	)	
and	)	
	)	
PITTSTON COMPANY, HEALTHSMART CASUALTY CLAIMS SOLUTIONS	)	DATE ISSUED: 3/15/2022
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Donald L. Addison, Cedar Bluff, Virginia.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Before: BUZZARD, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Denying Benefits (2019-BLA-05265) rendered on a miner's claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on September 11, 2017.[2]

The ALJ found Claimant did not establish complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. He further found Claimant established 27.01 years of underground coal mine employment but failed to establish total disability and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) or establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309.[4] He therefore denied benefits.

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[1] On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested that the Benefits Review Board review the ALJ's decision, but she does not represent Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant filed a previous claim on January 13, 2006, which the district director denied because the evidence did not establish any element of entitlement. Director's Exhibit 2.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must deny the subsequent claim unless he 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). Because the district director denied Claimant's prior claim for failure to establish any element of entitlement, he was required to submit new evidence establishing at least one

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the denial.[5] The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Complicated Pneumoconiosis

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large 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, is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

The United States Court of Appeals for the Fourth Circuit has held that "'[b]ecause prong (A) sets out an entirely objective scientific standard' - i.e., an opacity on an x-ray greater than one centimeter - x-ray evidence provides the benchmark for determining what under prong (B) is a 'massive lesion' and what under prong (C) is an equivalent diagnostic result reached by other means." *E. Assoc. Coal Corp. v. Director* [*Scarbro*], 220 F.3d 250, 256 (4th Cir. 2000), *quoting Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010);

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element to warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 2.

[5] We affirm, as unchallenged, the ALJ's finding of 27.01 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

Scarbro, 220 F.3d at 255-56; *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

X-ray Evidence at 20 C.F.R. §718.304(a)

The ALJ considered four interpretations of two chest x-rays. Decision and Order at 6. All the interpreting physicians are dually-qualified B readers and Board-certified radiologists, except Dr. Forehand who is a B reader only. *Id.* Dr. DePonte read the June 19, 2017 x-ray as positive for complicated pneumoconiosis,[7] while Dr. Adcock read it as negative for complicated pneumoconiosis. Director's Exhibits 17 (unpaginated) at 2, 19 at 2. The ALJ permissibly found the interpretations of this x-ray in equipoise because it was read as positive and negative by equally qualified physicians. Decision and Order at 12. Drs. Meyer and Forehand read the December 15, 2017 x-ray as negative for complicated pneumoconiosis.[8] Director's Exhibit 14 at 1; Employer's Exhibit 1. The ALJ thus permissibly found it negative for complicated pneumoconiosis. Because there is one negative x-ray and one with readings in equipoise, we affirm the ALJ's finding that Claimant did not establish complicated pneumoconiosis based on the x-ray evidence.[9] 20

[7] Dr. DePonte identified small opacities in all lung zones and noted a two-centimeter opacity in the right lower lung zone that could be a Category A large opacity or cancer and recommended comparison with prior x-rays or a computed tomography (CT) scan. Director's Exhibit 17 (unpaginated) at 2.

[8] Drs. Meyer and Forehand noted a 1/2 profusion of small opacities for pneumoconiosis in all lung zones. Employer's Exhibit 1; Director's Exhibit 14 at 1.

[9] The ALJ noted "that regulation recognizes that pneumoconiosis is progressive. 20 C.F.R. § 718.20l(c). Therefore, an abnormality that is seen on an earlier X-ray should also be apparent on a later X-ray. The fact that it is only the earlier X-ray that has an interpretation that is positive for complicated pneumoconiosis suggests that the abnormality identified as complicated pneumoconiosis may not in fact be that condition." Decision and Order at 12 n. 17. Contrary to the ALJ's analysis, because pneumoconiosis is a progressive disease, later negative x-rays are called into question when compared to earlier positive x-rays; although one of the x-rays must be wrong, "it is just as likely that the later [negative] evidence is faulty as the earlier [positive evidence]." *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992). However, because the ALJ relied on permissible reasons to find the readings of the earliest x-ray in equipoise and the readings of the later x-ray are negative, we consider the ALJ's error in concluding Dr. DePonte's positive reading for complicated pneumoconiosis was less credible based on the progressive nature of pneumoconiosis to

C.F.R. §718.304(a); *Id.* at 6, 12; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); Decision and Order at 6, 12.

Other Evidence at 20 C.F.R. §718.304(c)

The ALJ considered interpretations of five CT scans. Dr. Ramakrishnan, a Board-certified radiologist, interpreted the May 23, 2016 CT scan as showing "[s]table complicated coal worker's pneumoconiosis" and "focal fibrotic lesions . . . along the right oblique fissure and left lower lobe posteromedially." Director's Exhibit 17 (unpaginated) at 3.

Dr. Rao, a Board-certified radiologist, interpreted the November 3, 2016 CT scan as showing "[r]eticulonodular opacities and micronodules within both lungs," "a stable 2.3 [centimeter] fibrotic nodule in the right middle lobe," and "stable changes of complicated coal worker's pneumoconiosis within the lungs." *Id.* at 5-6.

Dr. Ramakrishnan, interpreted the December 21, 2016 CT scan as showing "[s]table nodular changes of the lung fields bilaterally" and "[s]table calcified bilateral hilar and mediastinal lymph nodes" both consistent with pneumoconiosis. *Id.* at 7-8. He also interpreted the September 8, 2017 CT scan as showing a "stable stellate peripheral nodule . . . measuring 2 [centimeters]," "[s]table nodular fibrosis," and "[n]ew increased interstitial markings bilateral lower lung zones suggesting interstitial edema." *Id.* at 9-10.

Dr. DePonte interpreted the April 23, 2019 CT scan as showing "classic findings of simple and complicated coal workers pneumoconiosis." Claimant's Exhibit 1. She stated "[f]ine nodular interstitial opacities are noted primarily in the upper lobes and superior segments of the lower lobes with coalescence," "[m]ild subpleural nodularity also with coalescence," and "[i]n the right upper lobe laterally, adjacent to the major fissure is a large opacity at least 22 x 12 [millimeters] . . . . likely a benign large opacity of coal workers pneumoconiosis, however malignancy should be excluded." *Id.*

The ALJ also considered Claimant's medical treatment records. Decision and Order at 9-10, 14-15. In his June 10, 2019 treatment note, Dr. Raj opined that a CT scan[10] showed indicia "highly suggestive" of progressive massive fibrosis. Claimant's Exhibit 2 at 4. In

be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[10] The ALJ correctly noted Dr. Raj did not indicate the date of the CT scan that he considered. Decision and Order at 9 n.13; Claimant's Exhibit 2.

his February 6, 2019 and August 22, 2019 treatment notes, Dr. Jawad indicated a CT scan[11] showed Claimant had multiple lung nodules compatible with pneumoconiosis and the largest nodule, measuring 1.5 x 1.8 centimeters in the middle right lobe, was consistent with complicated pneumoconiosis. Claimant's Exhibit 3 at 1-4. In her April 18, 2019 and May 16, 2019 treatment notes, nurse practitioner Willis noted the April 23, 2019 scan that Dr. DePonte read showed Claimant had simple and complicated pneumoconiosis and a large opacity in the right upper lobe consistent with pneumoconiosis.[12] Claimant's Exhibit 6 at 2.

In weighing the CT scan evidence, the ALJ concluded:

> Taking together the CT scan interpretations, I find those interpretations that specifically identified a large opacity by size were not consistent about the location of the opacity, with Dr. Ramakrishnan stating that the 09/08/2017 CT scan had a "stable stellate peripheral nodule" 2 [centimeters] in size, but not specifying location, Dr. Rao stating in the 11/03/2016 CT scan that there was a 2.3 [centimeter] nodule in the right middle lobe, and Dr. DePonte stating that the 04/23/2019 CT scan showed an opacity of at least 22 x 12 [millimeter] in the right upper lobe. Given that there appears to be no consensus about the location of any large opacity, I find that the CT scan evidence, of itself, does not establish that Claimant has complicated pneumoconiosis.

Decision and Order at 13.

The ALJ further found no statement in the record to establish that the lesions seen on the CT scans would appear as an opacity greater than one centimeter in diameter on an x-ray (an equivalency determination). Decision and Order at 13-15, *citing Scarbro*, 220 F.3d at 255-56 (requiring the ALJ to make an equivalency determination when considering evidence under 30 U.S.C. §921(c)(3)(B) or (C)); *Blankenship*, 177 F.3d at 243. He explained:

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[11] The ALJ correctly noted Dr. Jawad did not indicate the date of the CT scan that he considered. Decision and Order at 9 n.14; Claimant's Exhibit 3.

[12] The Clinch Valley treatment records from Claimant's June 22, 2018 hospitalization and a consultation report from his September 13, 2019 hospitalization do not mention complicated pneumoconiosis. Claimant's Exhibit 4; Employer's Exhibit 2.

> I am unable to infer that any of the large opacities mentioned on the CT scans or referred to in medical treatment notes were the same large opacity Dr. DePonte cited in the 06/19/2017 X-ray, because DePonte referred to an abnormality in the right lower lobe, and none of the CT scan interpretations or medical treatment notes cited a large opacity in that location.

Decision and Order at 15.

The ALJ also noted that "even though treatment records reflect that multiple health care practitioners, including two pulmonary specialists, concluded that Claimant has or likely has complicated pneumoconiosis/progressive massive fibrosis, the information in the record is not sufficient for me to make the equivalency determination that the Fourth Circuit demands to find that complicated pneumoconiosis is present." Decision and Order at 15. Thus, the ALJ concluded Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(c). *Id*.

Considering all of the evidence together, the ALJ stated that "[b]ecause the overall weight of the X-ray evidence is negative for complicated pneumoconiosis and the remaining evidence, though indicating that complicated pneumoconiosis may be present, does not permit me to make an equivalency determination . . . I conclude that Claimant is unable to establish, by a preponderance of the evidence, that he has complicated pneumoconiosis." Decision and Order at 15. Thus, the ALJ found Claimant did not invoke the irrebuttable presumption of total disability due to complicated pneumoconiosis.

The ALJ's conclusion that Claimant did not establish complicated pneumoconiosis is not adequately explained. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Contrary to the ALJ's analysis, although Drs. Ramakrishnan, Rao and DePonte identified opacites exceeding one centimeter in different zones of the right lung, they unanimously opined Claimant's opacities are consistent with "complicated pneumoconiosis," and Dr. DePonte specifically referred to Claimant's opacity as "large." Director's Exhibit 17 (unpaginated) at 5-6, 9-10; Claimant's Exhibit 1. Because Dr. Ramakrishnan did not specify the location of the two-centimeter nodule he saw on the 2017 CT scan, his reading does not necessarily contradict Dr. Rao's earlier identification of a stable 2.3 centimeter nodule in the middle lung zone in 2016. Moreover, the CT scan Dr. DePonte read was taken three years later in 2019 when she noted Claimant has *multiple nodules with coalescence* consistent with "classic" complicated pneumoconiosis, including a "large opacity" measuring at least 2.2 centimeters in the right upper lobe. Claimant's Exhibit 1.

To invoke the Section 411(c)(3) irrebuttable presumption, Claimant need only establish it is more likely than not he has a chronic lung condition that when diagnosed by

other means such as a CT scan would appear as a Category A, B, or C opacity on x-ray. The Fourth Circuit requires the ALJ to perform equivalency determinations based on his evaluation of all the medical evidence of record. *See Blankenship*, 177 F.3d at 243. Thus the absence of a specific statement of equivalency by a physician is not a bar to establishing complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 258 (while a physician who identified a 1.7 centimeter lesion on biopsy did not provide an equivalency determination, there was "no reason to believe that nodules of 1.7 centimeters would not produce x-ray opacities greater than one centimeter").

Here, the nodules that Drs. Ramakrishnan, Rao and DePonte identified on Claimant's CT scans exceed the 1.7 centimeter nodule at issue in *Scarbro*. Director's Exhibit 17 (unpaginated) at 5-6, 9-10; Claimant's Exhibit 1. The ALJ also did not identify any affirmative evidence in the record showing Claimant has alternate diseases to explain his large opacities.[13] *See Cox*, 602 F.3d at 287. Further, beyond identifying opacities greater than one centimeter in diameter on CT scan, Drs. Ramakrishnan, Rao, and DePonte specifically diagnosed "complicated pneumoconiosis" and Dr. DePonte referred to Claimant's 2.2 centimeter opacity as a "large opacity of coal workers' pneumoconiosis." *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 7 (1976) (differentiating between "simple pneumoconiosis" and "complicated pneumoconiosis"); 30 U.S.C. §921(c)(3) (a "large" opacity is one seen on x-ray as greater than one centimeter in diameter); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 (4th Cir. 1999) (physician's use of the term "complicated" could not "lead anyone to believe that he saw the 'massive lesions' required for application of 20 C.F.R. § 718.304" because the largest nodule he identified was only four millimeters); *Pittsburg & Midway Coal Mining Co. v. Director, OWCP* [*Cornelius*], 508 F.3d 975, 986-87 (11th Cir. 2007) (physician need not employ "magic words" – relevant question is whether the claimant met his burden to establish "a diagnosis of complicated pneumoconiosis under accepted medical standards").

Because the ALJ did not adequately explain his findings on complicated pneumoconiosis in view of the evidence and in accordance with applicable law, we vacate his conclusion that Claimant did not invoke the Section 411(c)(3) irrebuttable presumption. *See Wojtowicz*, 12 BLR at 1-165; Decision and Order at 15.

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption or establish entitlement under 20 C.F.R. Part 718, Claimant must prove he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary

[13] Claimant had a negative histoplasmosis test done on June 24, 2015. Claimant's Exhibit 5. There is no indication he was diagnosed with cancer.

or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies,[14] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions.[15] 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant evidence supporting total disability against all contrary relevant evidence. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-20-21 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ considered Dr. Forehand's opinion and Claimant's medical treatment records.[16] Decision and Order at 17-19. Dr. Forehand performed the Department of Labor's complete pulmonary evaluation on December 15, 2017. Director's Exhibit 14. He conducted non-qualifying pulmonary function and arterial blood gas studies and opined Claimant has "no respiratory impairment." *Id.* (unpaginated) at 4, 10, 17.[17]

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[14] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[15] The ALJ correctly determined Claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(ii). He found all of the pulmonary function studies non-qualifying and the only arterial blood gas study of record non-qualifying. Decision and Order at 16-17; Director's Exhibits 14, 18. The ALJ did not make a specific finding regarding whether Claimant could establish total disability under 20 C.F.R. §718.204(b)(2)(iii). However, the record contains no evidence of cor pulmonale with right-sided congestive heart failure. *See Larioni*, 6 BLR at 1-1278.

[16] The ALJ permissibly found evidence submitted with Claimant's current claim is more probative of his condition than evidence submitted in his prior claim. *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624 (6th Cir. 1988); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-34-35 (2004) (en banc) (more recent medical evidence may be accorded greater probative value than medical evidence submitted with a prior claim because of the progressive nature of pneumoconiosis); *Coffey v. Director, OWCP*, 5 BLR 1-404, 1-405-07 (1982); Decision and Order at 18.

[17] The ALJ noted Dr. Forehand did not discuss Claimant's use of home oxygen but still found his opinion "somewhat well-reasoned and well-documented." Decision and Order at 18 n.23.

The ALJ correctly noted Drs. Raj and Jawad, and nurse practitioner Willis, treated Claimant and each opined that Claimant has complicated pneumoconiosis. They reported Claimant's respiratory symptoms including wheezing, shortness of breath, use of oxygen at night, and coughing, but did not address whether Claimant lacks the respiratory capacity to perform his previous coal mine work. Decision and Order at 17-19; Claimant's Exhibits 2 at 1-4, 3 at 1-4, 6 at 1-5. The ALJ also addressed Clinch Valley Medical Center records from Claimant's June 2018 hospitalization for heart-related "precordial chest pain and shortness of breath." Decision and Order at 18. Among the cardiac notations, the discharge summary also referred to "chronic hypoxic respiratory failure secondary to chronic obstructive pulmonary disease/pneumoconiosis" and indicated Claimant was on home oxygen at night. *Id*. at 19; Claimant's Exhibit 4 at 7. A September 13, 2019 consultation report from Clinch Valley also noted Claimant's history of pneumoconiosis but did not address whether he is totally disabled. Employer's Exhibit 2 at 2. The ALJ concluded that, to the extent Claimant's treatment records included physicians' opinions, those opinions were not well-reasoned because there was no explanation for the diagnoses they provided with references to objective evidence. Decision and Order at 20.

Because the ALJ acted within his discretion in weighing the medical opinion evidence and Claimant's treatment records, we affirm his conclusion that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(4); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 535 (4th Cir. 1998).[18] We therefore affirm, as supported by substantial evidence, the ALJ's finding that Claimant did not establish a totally disabling respiratory or pulmonary impairment and therefore is unable to invoke the Section 411(c)(4) presumption or establish entitlement without the presumption at 20 C.F.R. Part 718. 30 U.S.C. §921(c)(4).

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established complicated pneumoconiosis at 20 C.F.R. §718.304(c) based on the CT scans. The ALJ must also weigh all relevant evidence on the issue of complicated pneumoconiosis together, interrelating the evidence from each category, before determining whether Claimant has complicated pneumoconiosis. *See Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56. If Claimant establishes complicated pneumoconiosis, the ALJ must also determine if it arose

[18] While the ALJ found Claimant's testimony credible regarding his pulmonary condition, he correctly noted that in a living miner's claim, total disability cannot be based "solely" on the miner's testimony. Decision and Order at 19, *citing* 20 C.F.R. §718.204(d)(5).

from his coal mine employment.[19] 20 C.F.R. §718.203. If the ALJ finds Claimant has invoked the Section 411(c)(3) irrebuttable presumption, he must award benefits. If Claimant does not establish complicated pneumoconiosis, the ALJ must reinstate the denial of benefits. In rendering all of his credibility determinations on remand, the ALJ must explain his rationale and conclusions as the Administrative Procedure Act (APA) requires.[20] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

[19] Based on the ALJ's finding that Claimant had 27.01 years of coal mine employment, he is entitled to a presumption that his pneumoconiosis arose out of his coal mine employment, with the burden shifting to Employer to rebut it. 20 C.F.R. §718.203(b).

[20] The APA provides that every adjudicatory decision must include "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).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge