BRB No. 06-0508 BLA

JOHN P. LOONEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SHADY LANE COAL CORPORATION	)	
	)	DATE ISSUED: 02/28/2007
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 on Remand Granting Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and W. Andrew Delph Jr. (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand Granting Benefits (02-BLA-0122) of Administrative Law Judge Pamela Lakes Wood rendered 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).[1] This case, involving claimant's

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726

request for modification of the denial of a duplicate claim, is before the Board for the third time.[2] Initially, the administrative law judge noted that Administrative Law Judge Edward J. Murty credited claimant with fifteen years, three months, and twenty-three days of coal mine employment. Recognizing that this case involves a petition for modification of the denial of a duplicate claim, the administrative law judge addressed the issues of total respiratory disability at 20 C.F.R. §718.204(b) and invocation of the irrebuttable presumption provided at 20 C.F.R. §718.304, as these issues were adjudicated against claimant in Judge Murty's prior denial. The administrative law judge found that the new evidence did not establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), but established invocation of the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R. §718.304. Based on the administrative law judge's finding of the existence of complicated pneumoconiosis, she also found that claimant established "a change in conditions, so as to establish modification, as well as a material change in conditions." 2003 Decision and Order at 19 (footnote omitted). Therefore, the administrative law judge awarded benefits, commencing as of January 1997.

In response to employer's appeal, the Board vacated the administrative law judge's award of benefits and remanded the case for further consideration. *Looney v. Shady Lane Coal Corp.*, BRB No. 04-0119 BLA (Nov. 26, 2004)(unpub.)(Hall, J.,

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(2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] Claimant filed his first claim for benefits on July 19, 1991, which was finally denied on November 25, 1991 by a Department of Labor claims examiner. Director's Exhibits 139-1, 139-16. Claimant took no further action on this claim. Subsequently, claimant filed a second claim for benefits on November 22, 1996. Director's Exhibit 1. Judge Murty denied claimant's claim on August 5, 1998. Director's Exhibit 37. Subsequently, claimant filed a request for reconsideration which was denied by Associate Chief Administrative Law Judge Thomas M. Burke. Director's Exhibit 39. In response to claimant's timely appeal, the Board affirmed Judge Murty's denial of benefits and Judge Burke's Decision and Order Denying Reconsideration on December 14, 1999. In doing so, the Board affirmed Judge Murty's findings that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(c) (2000) and invocation of the irrebuttable presumption provided at 20 C.F.R. §718.304 (2000). Director's Exhibit 49. Thereafter, claimant filed a petition for modification with supporting evidence on March 25, 2000, which the district director denied on October 3, 2000. Director's Exhibits 61, 86. Claimant filed a second petition for modification on December 4, 2000, which was denied by the district director on August 7, 2001. Director's Exhibits 89, 134. Thereafter, claimant requested a hearing before the Office of Administrative Law Judges.

dissenting). Specifically, the Board vacated the administrative law judge's finding of complicated pneumoconiosis pursuant to Section 718.304 and remanded this case for the administrative law judge "to conduct a full and comparative weighing of all relevant evidence at Section 718.304(a) and (c)."[3] *Looney*, slip op. at 6. The Board further instructed the administrative law judge to reconsider whether Dr. Forehand's opinion was worthy of determinative weight based on its underlying documentation. Additionally, the Board noted that the administrative law judge's weighing of the evidence "must comport with 'the Fourth Circuit's mandate in [*Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999)] that the administrative law judge is bound to perform equivalency determinations to make certain that, regardless of which diagnostic technique is used, the same underlying condition triggers the irrebuttable presumption.'" *Id.* at 7 (quoting *Braenovich v. Cannelton Industries, Inc./Cypress Amax*, 22 BLR 1-236, 1-245 (2003). Finally, the Board vacated the administrative law judge's finding regarding the date from which benefits commence. Judge Hall dissented from the majority's decision to vacate the administrative law judge's finding of complicated pneumoconiosis. In her dissenting opinion, Judge Hall stated that because the administrative law judge's Section 718.304 determinations were "supported by substantial evidence, including the medical opinion of Dr. Forehand, the CT scan interpretation of Dr. Navani, and the x-ray report of Dr. Sargent," she would affirm the administrative law judge's award of benefits. *Id.* at 8.

On remand, the administrative law judge reevaluated the new x-ray evidence pursuant to Section 718.304(a) and found, contrary to her earlier finding, that this evidence was not in equipoise, but that it established the existence of complicated pneumoconiosis. After reconsidering the new CT scan evidence, the administrative law judge found that this evidence was in equipoise and, therefore, failed to establish the existence of complicated pneumoconiosis pursuant to Section 718.304(c). According greatest weight to Dr. Forehand's opinion, the administrative law judge found that the new medical opinion evidence established the existence of complicated pneumoconiosis. Considering all of the new evidence together, the administrative law judge determined that claimant established the existence of complicated pneumoconiosis and, therefore, also found that claimant established modification based on a change in conditions pursuant to Section 725.310 (2000) and demonstrated a material change in conditions

[3] The Board stated that "[t]he administrative law judge correctly noted that because there is no biopsy evidence of record, invocation of the irrebuttable presumption cannot be established under 20 C.F.R. §718.304(b)." *Looney v. Shady Lane Coal Corp.*, BRB No. 04-0119 BLA, slip op. at 3 n.4 (Nov. 26, 2004)(unpub.)(Hall, J., dissenting).

pursuant to Section 725.309(d) (2000).[4] Considering all of the evidence of record, the administrative law judge found that claimant established the existence of complicated pneumoconiosis pursuant to Section 718.304. Accordingly, the administrative law judge awarded benefits, commencing as of January 17, 2001.

Subsequently, the Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Reconsideration challenging the administrative law judge's determination regarding the date from which benefits commence. Additionally, claimant's counsel filed an application for attorney's fees. In her Order Denying Reconsideration and Second Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge denied the Director's Motion for Reconsideration. Additionally, the administrative law judge awarded attorney's fees to claimant's counsel totaling $1,537.50, representing 9.25 hours of legal services rendered at the varied rates of $250.00 per hour for Joseph E. Wolfe, $200.00 per hour for Bobby S. Belcher, and $125.00 per hour for Andrew Delph.

On appeal, employer argues that the administrative law judge erred in reweighing the x-ray evidence pursuant to Section 718.304(a). Additionally, employer asserts that the administrative law judge erred in her reconsideration of the CT scan evidence and medical opinion evidence. Finally, employer asserts that the administrative law judge erred in failing to consider all of the previously submitted evidence in conjunction with Dr. Forehand's report, prior to finding a change in conditions. Claimant responds, urging affirmance of the administrative law judge's award of benefits. Employer has filed a reply brief, reiterating the arguments set forth in its Petition for Review and brief. The Director has declined to participate in this appeal.

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. 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).

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

[4] Although the Department of Labor has made substantive revisions to 20 C.F.R. §§725.309, 725.310 in the new regulations, those revisions apply only to claims filed after January 19, 2001. 20 C.F.R. §725.2(c).

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 United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case arises, has held that, "[b]ecause prong (A) sets out an entirely objective scientific standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition which is diagnosed by biopsy or autopsy under prong (B) or by other means under prong (C) would 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 (4th Cir. 2000); *Blankenship*, 177 F.3d at 243, 22 BLR at 2-561-62. 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, including evidence of simple pneumoconiosis and of no pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991)(*en banc*).

X-RAY EVIDENCE

Employer first asserts that the administrative law judge erred in reconsidering the weight to be accorded to the new x-ray evidence on remand. Employer argues that because the Board found no errors in the administrative law judge's prior weighing of the new x-ray evidence, the administrative law judge's findings regarding the new x-ray evidence became the law of the case. Employer, therefore, contends that "[t]he Board should reverse the administrative law judge's reweighing of the new x-ray evidence on remand." Employer's Brief at 22. In the Board's November 26, 2004 Decision and Order, the Board vacated the administrative law judge's Decision and Order on Remand Granting Modification and Benefits. *Looney*, slip op. at 8. The Board instructed "the administrative law judge to conduct a full and comparative weighing of all relevant evidence at Section 718.304(a) and (c)." *Id.* at 6. When the Board vacates an administrative law judge's decision, the effect is to annul or set aside that decision, rendering it of no force or effect. *Dale v. Wilder Coal Co.*, 8 BLR 1-119, 1-120 (1985). Therefore, contrary to employer's assertion, the issue of whether claimant established the existence of complicated pneumoconiosis at Section 718.304 was before the administrative law judge on remand, and it was not error for her to reevaluate the x-ray evidence and render new findings regarding this evidence on remand.

Employer also raises several allegations of error with regard to the administrative law judge's reconsideration of the new x-ray evidence on remand. Employer asserts that the administrative law judge "failed to provide any valid explanation for crediting the

isolated interpretations of complicated pneumoconiosis on films dated January 27, 2000 and March 19, 2001, over the interpretations finding no complicated pneumoconiosis obtained on [films dated] May 19, 2000, August 21, 2000, October 19, 2000 and December 19, 2000." Employer's Brief at 24.

First, employer asserts that the administrative law judge mischaracterized Dr. Navani's report interpreting a January 27, 2000 "x-ray" because, as reflected on Dr. Navani's report, this physician reviewed a CT scan rather than an x-ray. Consistent with employer's assertion, the record reflects that Dr. Navani's finding of a Category A large opacity was made from a January 27, 2000 CT scan and not an x-ray. Director's Exhibit 127. When the administrative law judge considered the new x-ray evidence on remand, she found that Dr. Navani's "x-ray" interpretation was supportive of a finding of complicated pneumoconiosis. The administrative law judge noted, "[i]n my previous decision, I apparently missed this x-ray reading."[5] 2005 Decision and Order on Remand at 12 n.15.

As employer argues, the administrative law judge's mischaracterization of Dr. Navani's January 27, 2000 interpretation is significant because in her 2003 decision, she found the new x-ray evidence to be in equipoise, whereas in her 2005 Decision and Order on Remand, she found that the new x-ray evidence established the existence of complicated pneumoconiosis. In finding that the new x-ray evidence established the existence of complicated pneumoconiosis in her 2005 decision, the administrative law judge stated that "[a]lthough the majority of the new x-rays (dated May 19, 2000, August 21, 2000, October 19, 2000, and December 19, 2000) were equivocal on the issue of complicated pneumoconiosis, with conflicting interpretations among equally qualified physicians, and therefore may be deemed in equipoise, the March 19, 2001 and January 27, 2000 x-rays support a finding of complicated pneumoconiosis, sufficiently weighing the evidence in favor of the Claimant." *Id.* at 14. The administrative law judge further found that Dr. Navani's reading of the January 27, 2000 "x-ray," when compared with the August 27, 1991 x-ray readings, "suggests a worsening of Claimant's condition and is compatible with the progressive nature of pneumoconiosis." *Id.* Because the administrative law judge mistakenly considered Dr. Navani's January 27, 2000 interpretation as that of an x-ray reading rather than a CT scan reading, and because the administrative law judge's mistake is critical to her finding of the existence of complicated pneumoconiosis by x-ray pursuant to Section 718.304(a), we vacate the administrative law judge's Section 718.304(a) finding and remand this case for her to

[5] As employer notes, the administrative law judge also considered Dr. Navani's interpretation of the January 27, 2000 CT scan when weighing the CT scan evidence together. Decision and Order on Remand at 15.

reconsider the x-ray evidence. *See generally Beatty v. Danri Corporation and Triangle Enterprises*, 16 BLR 1-11 (1991); *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Second, employer contends that "the administrative law judge erred in finding Dr. Barrett's interpretation of the March 19, 2001 x-ray film to outweigh Dr. Castle's interpretation" of this same x-ray. Employer's Brief at 26. Dr. Barrett, a B reader and Board-certified radiologist, identified a Category A large opacity on the March 19, 2001 x-ray, and Dr. Castle, a B reader, found the existence of simple pneumoconiosis and no large opacities on this x-ray. Director's Exhibits 129, 132. The administrative law judge accorded Dr. Barrett's reading greater weight based on his superior radiological qualifications. Employer asserts that despite Dr. Barrett's additional qualification as a Board-certified radiologist, "there is no valid reason for crediting his opinion over Dr. Castle's opinion." Employer's Brief at 26. Employer points out that "Dr. Castle had the advantage of considering not only the x-ray film, but a complete examination and a review of other evidence of record[, whereas] Dr. Barrett did not have this advantage." *Id.* However, contrary to employer's contention, it is not necessary for a physician to perform a physical examination in order to provide a credible opinion concerning the existence of pneumoconiosis by x-ray. *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-55 (1988). Therefore, in considering the conflicting readings of the March 19, 2001 x-ray by Drs. Barrett and Castle, the administrative law judge permissibly accorded greater weight to Dr. Barrett's reading over Dr. Castle's reading, based on Dr. Barrett's superior radiological qualifications. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344, 1-345-46 (1985).

Third, employer asserts that the administrative law judge erred in treating Dr. Sargent's interpretations of the May 19, 2000, October 19, 2000, and December 19, 2000 x-rays as evidence of the existence of complicated pneumoconiosis. Specifically, employer contends that because Dr. Sargent commented on these films that it is necessary to rule out granulomatous disease in the upper lung lobes, the administrative law judge should have considered these comments in determining whether Dr. Sargent's interpretations of these x-rays were positive for complicated pneumoconiosis.[6] We agree. In addition to diagnosing Category A or B large opacities, Dr. Sargent commented that he needed to "rule out associated granulomatous disease in [the] upper lobes." Director's Exhibits 111-115. It is unclear from the record whether Dr. Sargent's comment is an alternative diagnosis calling into question his diagnosis of complicated pneumoconiosis,

[6] For each of these three x-rays, Dr. Sargent found either Category A or B large opacities and included the following in the "Other Comments" section: smoking history??, etiology – rule out associated granulomatous disease in upper lobes, right illegible adenopathy??, etiology??, correlate clinically, need last lateral oblique views. Director's Exhibits 111-115.

a reflection of some uncertainty as to the complicated pneumoconiosis diagnosis, or merely an additional diagnosis of granulomatous disease. Although the administrative law judge summarized Dr. Sargent's comments, she did not discuss them when weighing his x-ray readings. Therefore, when evaluating the x-ray evidence on remand, the administrative law judge should discuss and weigh the entirety of each of Dr. Sargent's x-ray readings, including his additional comments. *See Melnick*, 16 BLR at 1-37.

CT SCAN EVIDENCE

Pursuant to Section 718.304(c), employer asserts that the administrative law judge's finding that the new CT scan evidence is in equipoise is not supported by substantial evidence. Specifically, employer argues that "the most unequivocal [CT scan] evidence from Drs. Wheeler and Scott reflect the absence of complicated pneumoconiosis," that "Dr. Navani's interpretation was, at best, equivocal," and that "Dr. Forehand lacks any qualifications in the interpretation of CT scan evidence." Employer's Brief at 29. The record contains one January 27, 2000 CT scan, which was read by Drs. Darlak, Forehand, Wheeler, Scott, and Navani. The administrative law judge noted that the findings of complicated pneumoconiosis by Drs. Forehand and Navani were contrary to the findings of Drs. Wheeler and Scott. The administrative law judge accorded less weight to the interpretations by Dr. Darlak because she found that he failed "to address complicated pneumoconiosis" and because there were inconsistencies in his two reports. 2005 Decision and Order on Remand at 15. The administrative law judge found that the remaining reports were distinguishable based on the physicians' qualifications, noting that Dr. Forehand is a B reader and that Drs. Wheeler, Scott, and Navani, who are B readers and Board-certified radiologists, possess higher radiological qualifications. Based upon the conflicting opinions among the equally qualified physicians, the administrative law judge found the CT scan evidence to be "in equipoise, and thus [found that] Claimant has failed to satisfy the preponderance of the evidence standard based upon the CT scan evidence." *Id.* Contrary to employer's assertion, the administrative law judge permissibly found the conflicting opinions of Drs. Wheeler, Scott, and Navani, who possess the same radiological qualifications, to be in equipoise. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52, 16 BLR 2-61, 2-66 (4th Cir. 1992)(stating that "counting heads" is a "hollow" way to resolve conflicts in the evidence); *Maddaleni v. Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *see also Trent*, 11 BLR at 1-27-28. Accordingly, we affirm the administrative law judge's Section 718.304(c) finding that the CT scan evidence was in equipoise as to the existence of complicated pneumoconiosis.

MEDICAL OPINION EVIDENCE

Employer raises numerous assertions regarding the administrative law judge's consideration of the new medical opinion evidence. The new medical opinion evidence

in the record consists of findings of complicated pneumoconiosis by Drs. Forehand, Robinette, and Rasmussen, and findings of no complicated pneumoconiosis by Drs. Hippensteel and Castle. Employer first asserts that the administrative law judge erred in failing to provide a valid basis for finding Dr. Forehand's qualifications to be equal to the qualifications of Drs. Hippensteel and Castle. In comparing the qualifications of these three physicians, the administrative law judge stated that "[w]hile Dr. Forehand is not board certified in pulmonary medicine, he holds comparable academic appointments and publications in the field to Drs. Castle and Hippensteel." 2005 Decision and Order on Remand at 19. Therefore, the administrative law judge found "that Drs. Forehand, Castle and Hippensteel are equally qualified to render medical opinions on the issue of complicated pneumoconiosis." *Id.* After finding that Drs. Castle, Hippensteel, and Forehand hold "comparable academic appointments and publications in the field," the administrative law judge did not explain why she still found these three physicians to be equally qualified, when Drs. Castle and Hippensteel are additionally Board-certified in internal medicine and pulmonary disease.[7] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). Accordingly, we vacate the administrative law judge's finding that Drs. Castle, Hippensteel, and Forehand are equally qualified and remand this case for the administrative law judge to reconsider the qualifications of Drs. Castle, Hippensteel, and Forehand and provide a full explanation for her credibility determinations on remand, as required by the Administrative Procedure Act. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2); *McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4 (1987); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589, 1-591 (1984).

Employer next asserts that the administrative law judge erred in finding Dr. Forehand's opinion "to be better reasoned and documented" than the opinions of Drs. Castle and Hippensteel. In weighing Dr. Forehand's opinion with the contrary opinions of Drs. Castle and Hippensteel, the administrative law judge stated that:

> The reports of Drs. Hippensteel and Castle contained some analysis; however, the alternative diagnoses stated in the reports were speculative in nature and were not supported by medical testing. Despite negative TB and histoplasmosis tests, Dr. Castle stated that there could be other granulomatous diseases, such as sarcoidosis, but this suggestion does not amount to a diagnosis. Further, [Dr. Castle] found that Claimant's

[7] The record reveals that both Drs. Castle and Hippensteel are B-readers and Board-certified in internal medicine and pulmonary disease, whereas Dr. Forehand is a B-reader. Director's Exhibits 11, 34, 129.

> respiratory impairment was due to coronary artery disease but did not reference any objective medical data to support his findings. His discussion of the x-ray findings is confusing at best and, as noted above, I have found the x-ray evidence to weigh in favor of a finding of complicated pneumoconiosis. Similarly, Dr. Hippensteel stated that the calcifications were consistent with old granulomatous disease rather than CWP, and, while he points to other factors that led him to discount complicated CWP, his suggestion of other possible forms of granulomatous disease is speculative in nature. In contrast, the report by Dr. Forehand sufficiently considered and ruled out alternative diseases before reaching the conclusion that Claimant had complicated pneumoconiosis.

2005 Decision and Order on Remand at 19-20.

Employer argues that the administrative law judge provided no valid basis for discounting the opinions of Drs. Castle and Hippensteel. Employer's argument has merit. First, the administrative law judge discounted the opinions of Drs. Castle and Hippensteel, that claimant does not have complicated pneumoconiosis, in part, because these physicians' alternative diagnoses are speculative in nature. However, the relevant question in weighing these physicians' opinions regarding the existence of complicated pneumoconiosis, is not whether Drs. Castle and Hippensteel definitively found the changes in claimant's lungs to be due to other diseases, but whether these physicians definitively excluded complicated pneumoconiosis as a diagnosis. *See Lester*, 993 F.2d at 1146, 17 BLR at 2-188. Additionally, regarding Dr. Castle's opinion, the administrative law judge stated that Dr. Castle did not reference any objective medical data to support his finding that claimant's respiratory impairment was due to claimant's coronary artery disease. In fact, Dr. Castle noted that claimant "had a thallium stress test which showed an area of ischemia indicating the presence of coronary artery disease [which] can result in the development of shortness of breath." Director's Exhibit 129. The administrative law judge also stated that Dr. Castle's "discussion of the x-ray findings is confusing at best" and is contrary to her finding that the x-ray evidence is supportive of complicated pneumoconiosis. However, in finding Dr. Castle's discussion of the x-ray evidence to be "confusing," the administrative law judge failed to provide any rationale to support her finding. Moreover, because we have vacated the administrative law judge's finding of complicated pneumoconiosis by x-ray pursuant to Section 718.304(a), the administrative law judge, on remand, must reevaluate her credibility determinations regarding Dr. Castle's opinion, because they are based on her Section 718.304(a) finding. In light of the foregoing, we hold that the administrative law judge failed to provide a valid basis for discrediting the opinions of Drs. Castle and Hippensteel, and we instruct the administrative law judge to reconsider the credibility of these physicians' opinions on remand.

Employer also contends that the administrative law judge erred in "crediting Dr. Forehand's opinion without adequately analyzing the actual underlying documentation and reasoning provided by the physician." Employer's Brief at 35. Employer's contention has merit. The administrative law judge found that Dr. Forehand's report "contains the clearest explanation of the Claimant's condition and is most persuasive." 2005 Decision and Order on Remand at 20. In so doing, the administrative law judge pointed out that "Dr. Forehand's report was adequately supported by documentation through the CT Chest scan taken by Dr. Darlak, which is attached to the medical report." *Id.* However, in reviewing the CT scan evidence earlier in her decision, the administrative law judge gave less weight to Dr. Darlak's interpretations because she found that this physician's two reports were inconsistent and failed to address complicated pneumoconiosis. Therefore, it is unclear how the administrative law judge could rationally find Dr. Forehand's opinion to be adequately supported by Dr. Darlak's CT scan interpretation. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). Moreover, as employer asserts, because the administrative law judge found the new CT scan evidence to be in equipoise, *i.e.* inconclusive, she erred in finding that it provided support for Dr. Forehand's diagnosis of complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994). Therefore, we instruct the administrative law judge to reconsider the adequacy of the documentation underlying Dr. Forehand's opinion on remand.

Employer additionally asserts that the administrative law judge erred in according greater weight to Dr. Forehand's opinion based on his status as claimant's treating physician. Because we have vacated the administrative law judge's crediting of Dr. Forehand's opinion based on the adequacy of its documentation, we instruct the administrative law judge to reconsider the deference to be given to Dr. Forehand's opinion based on his status as claimant's treating physician. *See Consolidation Coal Co. v. Held*, 314 F.3d 184, 187, 22 BLR 2-564, 2-571 (4th Cir. 2002)(stating that an administrative law judge may not automatically accord greater weight to the medical opinion of a treating physician).

CONCLUSION

Because we vacate the administrative law judge's findings regarding the new x-ray and medical opinion evidence at Section 718.304, we also vacate the administrative law judge's finding that all of the new evidence together supported a finding of complicated pneumoconiosis pursuant to Section 718.304. On remand, the

administrative law judge must reconsider all of the new medical evidence together pursuant to Section 718.304.[8]

If the administrative law judge again finds that the newly submitted evidence establishes the existence of complicated pneumoconiosis pursuant to Section 718.304, she must then perform a comparative weighing of all of the evidence of record to determine if claimant has established the existence of complicated pneumoconiosis. If all of the evidence does not establish complicated pneumoconiosis, the administrative law judge should consider whether all the evidence establishes claimant's entitlement on the merits. *See* 20 C.F.R. §§718.202, 718.203,718.204. In reconsidering all of the evidence of record regarding the existence of complicated pneumoconiosis on remand, the administrative law judge must provide a detailed analysis for her weighing of this evidence.[9] *See Wojtowicz*, 12 BLR at 1-165; *Tenney*, 7 BLR at 1-591.

[8] We instruct the administrative law judge on remand to render any necessary equivalency determinations in accordance with *Scarbro* and *Blankenship*. *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999); *see Gollie v. Elkay Mining Co.*, 22 BLR 1-306 (2003); *Braenovich v. Cannelton Industries, Inc./Cypress Amax*, 22 BLR 1-236 (2003). The administrative law judge must also determine on remand whether the opacities seen are related to a chronic dust disease of the lung pursuant to 20 C.F.R. §718.203(b). *See Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993).

[9] If the administrative law judge finds that the evidence establishes claimant's entitlement to benefits on remand, we hold that the administrative law judge's award of attorney's fees is affirmed, because it is unchallenged on appeal. *See Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Order Denying Reconsideration and Second Supplemental Decision and Order Awarding Attorney's Fees at 6.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge