

BRB Nos. 11-0367 BLA
and 11-0440 BLA

PATRICIA A. PADAGOMAS)	
(Widow of and on behalf of EDWARD J.)	
PADAGOMAS))	
)	
Claimant-Petitioner) DATE ISSUED: 02/23/2012	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent) DECISION and ORDER	

Appeal of the Decision and Order Denying Miner's Benefits and Denying Survivor's Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for claimant.

Helen H. Cox (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: SMITH, McGANERY and BOGGS, Administrative Appeals Judges.

Claimant¹ appeals the Decision and Order Denying Miner's Benefits and Denying Survivor's Benefits (2009-BLA-05773 and 2009-BLA-05774) of Administrative Law

¹ Claimant is the widow of Edward J. Padagomas, the deceased miner, and is pursuing the miner's claim on his behalf, as well as pursuing her own claim. Director's Exhibit 8.

Judge Adele Higgins Odegard rendered on consolidated claims filed pursuant to 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 relevant procedural history is as follows. The miner filed a subsequent claim² on September 2, 2008, but died on October 16, 2008, while his claim was pending before the district director. Director's Exhibits 3, 13. Claimant filed her survivor's claim on November 3, 2008. Director's Exhibit 23. The district director denied benefits in both claims on April 28, 2009. Director's Exhibits 16, 34. Claimant requested a hearing and the claims were consolidated into one record, consisting of thirty-eight Director's Exhibits, which was forwarded to the Office of Administrative Law Judges. Director's Exhibits 35, 17.

Following a hearing on April 27, 2010, the administrative law judge issued her Decision and Order, dated February 2, 2011, wherein she indicated that all of the record evidence would be considered in deciding both claims, as that evidence complied with the evidentiary limitations at 20 C.F.R. §725.414. The administrative law judge found that the miner worked three years in coal mine employment and adjudicated the claims pursuant to the regulations at 20 C.F.R. Part 718.³ With regard to the miner's subsequent claim, the administrative law judge found that it was not necessary to address whether the requirements of 20 C.F.R. §725.309 were satisfied, as she found that the evidence failed to establish the existence of pneumoconiosis, a requisite element of entitlement. With regard to the survivor's claim, the administrative law judge found that, because the miner did not have pneumoconiosis, claimant was unable to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Thus, the administrative law judge denied benefits in both claims.

On appeal, claimant contends that the administrative law judge did not give proper consideration to her testimony regarding the miner's health. Claimant asserts that the administrative law judge erred in failing to find the existence of pneumoconiosis

² The miner initially filed an application for benefits on May 25, 2006, which was denied by the district director on February 1, 2007, because the evidence was insufficient to establish any of the elements of entitlement. Director's Exhibit 1.

³ We affirm, as unchallenged by the parties on appeal, the administrative law judge's determination that the miner had three years of coal mine employment and her finding that Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as amended by Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, §1556(a) (2010), is inapplicable to either the miner's claim or the survivor's claim, as the miner had less than fifteen years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

established based on the positive x-ray evidence, biopsy evidence, the miner’s treatment records and the medical opinion of Dr. Levinson. Claimant specifically contends that the administrative law judge erred in relying on Dr. Spagnolo’s opinion to discredit the positive x-ray evidence for pneumoconiosis. The Director, Office of Workers’ Compensation Programs (the Director), responds, urging affirmance of the denial of benefits.

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.⁴ 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).

I. The Miner’s Subsequent Claim

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that “one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final.”⁵ 20 C.F.R. §725.309(d); *see 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(d)(2). Once a change in an applicable condition is established, the administrative law judge is required to review all of the record evidence relevant to entitlement. *See White*, 23 BLR at 1-3.

In this case, the miner’s prior claim was denied for failure to establish any of the requisite elements of entitlement. Therefore, claimant had to establish, based on the newly submitted evidence, one of the elements of entitlement in order to obtain a review of the merits of the miner’s claim. 20 C.F.R. §725.309(d)(2), (3). The administrative law

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner’s coal mine employment was in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director’s Exhibit 4.

⁵ In order to establish entitlement to benefits in the miner’s claim pursuant to 20 C.F.R. Part 718, claimant must prove that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that the miner was totally disabled and that his disability was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one 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).

judge, however, determined that it was not necessary to specifically consider whether a change in an applicable condition of entitlement was established pursuant to 20 C.F.R. §725.309, as the evidence failed to establish the existence of pneumoconiosis.⁶

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered four readings of two x-rays dated October 9, 2008 and October 14, 2008. Decision and Order at 11-12. The administrative law judge found that the October 9, 2008 x-ray was read as positive by Dr. Smith, dually qualified as a Board-certified radiologist and B reader, but was interpreted as “unreadable” by Dr. Navani, also dually qualified as a Board-certified radiologist and B reader.¹ *Id.*; Director’s Exhibits, 10, 12. The administrative law judge found that the October 14, 2008 x-ray was read as positive for pneumoconiosis by Dr. Smith, but as negative by Dr. Navani. *Id.* The administrative law judge concluded that “taking together all of the [x]-ray evidence, . . . there are more positive than negative interpretations.” Decision and Order at 11.

Pursuant to 20 C.F.R. §718.202(a)(2), the administrative law judge noted that, on April 19, 2005, the miner underwent a biopsy of a nodule found in the right lung. Decision and Order at 8; Director’s Exhibit 30. The report of biopsy, prepared by Dr. Paniker, a pathologist, included the following microscopic description:

Sections show pieces of degenerating blood clots and pulmonary tissue showing anthracotic pigment deposition. Clusters of macrophages containing clusters of anthracotic pigment granules are present. No tumor or granuloma is detected.

Director’s Exhibit 30. The final diagnosis was “Anthracotic nodules.” *Id.* The administrative law judge found that the April 19, 2005 biopsy report was insufficient to establish that the miner had “clinical pneumoconiosis,” as the report did not indicate that the anthracotic pigment caused “a fibrotic reaction of the lung tissue to the particulate matter,” consistent with the definition of clinical pneumoconiosis at 20 C.F.R. §718.201.⁷ Decision and Order at 30.

⁶ The administrative law judge based her finding that the miner did not have pneumoconiosis on the newly submitted evidence and did not review the evidence obtained in conjunction with the miner’s prior claim.

⁷ The regulation at 20 C.F.R. §718.201(a)(1) states that clinical pneumoconiosis “consists of those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and *the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment*. This definition includes,

Pursuant to 20 C.F.R. §718.202(a)(4),⁸ the administrative law judge considered two medical opinions by Drs. Levinson and Spagnolo, the miner's treatment records, and the miner's death certificate. Decision and Order at 8-11. In a report dated November 24, 2009, Dr. Levinson indicated that he reviewed medical records from the Veterans' Administration (VA) Medical Center, a copy of the miner's death certificate, a copy of a Department of Labor examination conducted by Dr. Talati on June 19, 2006, in conjunction with the miner's prior claim, and a report by Dr. Spagnolo, as outlined *infra*. Claimant's Exhibit 1. Dr. Levinson noted that the miner worked three years in coal mine employment and smoked for twenty-five years. *Id.* He also noted that the miner suffered from "a sizeable pleural effusion" that was monitored by multiple CT scans taken from 2005-2008. *Id.* Dr. Levinson reported that claimant had a "CT guided needle biopsy on April 19, 2005" that showed "anthracotic nodules." *Id.* He indicated that a pulmonary function test obtained by Dr. Talati in 2006 showed a moderate restrictive impairment, and that CT scans dated February 8 and April 17, 2007, revealed masses or "nodular" densities in both lungs that were "thought to be most likely granuloma[s]." *Id.* He further noted that a "progress note" contained in the VA Medical Center records referenced a lung biopsy performed by Dr. Vo on July 31, 2008, which purportedly showed no malignancies but included a diagnosis of "cor pulmonale due to anthracosilicosis." *Id.*

Dr. Levinson opined that the miner had pneumoconiosis, citing the multiple CT scans showing evidence of nodularity, consistent with coal dust exposure. Claimant's Exhibit 1. He further opined that the miner had a significant respiratory impairment, as "documented by his pulmonary function studies and measurements of oxygenation." *Id.* Dr. Levinson concluded that "the functional impairment as well as the pathologic evidence [showed] a significant injury to the lungs" and that the miner suffered from "a chronic pulmonary disease with pulmonary impairment that was significantly related [to]

but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." 20 C.F.R. §718.201(a)(1) (emphasis added).

⁸ The administrative law judge found that claimant was not eligible for any of the regulatory presumptions for establishing the existence of pneumoconiosis, as set forth in 20 C.F.R. §718.202(a)(3). Decision and Order at 8.

and substantially aggravated by the dust exposure he encountered in his [three plus] years of coal mine employment.”⁹ *Id.*

Dr. Levinson was also deposed on December 22, 2009. Claimant’s Exhibit 1. He testified that, while three years of coal dust exposure is “not extensive,” the miner’s medical record “shows clear-cut anatomical and pathological evidence” of clinical pneumoconiosis caused by coal dust exposure, Dr. Levinson noted that the miner had a restrictive respiratory impairment that is consistent with exposure to coal dust and “is not the typical kind of impairment” associated with smoking. *Id.* He also cited to the miner’s “dangerously low” oxygen levels to support his opinion. *Id.* While Dr. Levinson opined that the miner had multiple health problems, including heart disease, he indicated that coal dust exposure could not be excluded as a contributing factor in the miner’s respiratory disability during his lifetime or in his death. *Id.*

Dr. Spagnolo prepared a consultative report dated September 20, 2009, which was based on his review of the treatment records from the VA Medical Center, the miner’s death certificate and Dr. Smith’s interpretations of the x-rays dated October 9, 2008 and October 14, 2008. Director’s Exhibit 40. Dr. Spagnolo stated that three years of coal mine employment was “an extremely limited period of exposure and [that] it is highly unlikely that the miner would have developed clinically significant pneumoconiosis from his [coal mine] dust exposure even if he were a susceptible host.” *Id.* In refuting the positive x-ray readings by Dr. Smith, Dr. Spagnolo noted that the October 9 and 14, 2008 x-rays were portable chest radiographs, which should not be used to determine the presence or absence of pneumoconiosis. *Id.* He further noted that the x-rays were taken several days before the miner’s death, when the miner was “critically ill with heart failure, fluid overload and endstage renal disease.” *Id.* Dr. Spagnolo stated that “[a]ll of these conditions would lead to changes on the radiograph easily confused with changes consistent with pneumoconiosis.” *Id.* Dr. Spagnolo concluded, based on his review of the evidence, that the miner did not have clinical or legal pneumoconiosis. *Id.*

In weighing the conflicting medical opinion evidence, the administrative law judge rejected Dr. Levinson’s opinion, that the miner had pathological evidence of pneumoconiosis, noting that biopsy evidence of anthracotic pigmentation is insufficient to establish the existence of pneumoconiosis under the regulations. Decision and Order at 13. The administrative law judge further noted that, while Dr. Levinson reported that the miner’s lungs had nodules consistent with coal dust exposure, the CT scan evidence

⁹ In an addendum dated December 13, 2009, Dr. Levinson opined that pneumoconiosis was a contributing factor in the miner’s death, along with ischemic heart failure and diabetes. Director’s Exhibit 1.

did not specifically identify any nodules as being “pneumoconiotic.”¹⁰ *Id.* The administrative law judge concluded that Dr. Levinson’s opinion was insufficiently reasoned, insofar as he “made a leap of logic that, because the nodules are not cancerous, they must be pneumoconiosis.” *Id.* Thus, the administrative law judge assigned Dr. Levinson’s opinion little weight. *Id.* Because Dr. Spagnolo did not diagnose pneumoconiosis, the administrative law judge concluded that there was no reasoned medical opinion evidence to support a finding of pneumoconiosis. *Id.* at 14.

Additionally, the administrative law judge noted that the records from the VA Medical Center in Wilkes-Barre consist of more than 2,000 pages of progress notes, admission and discharge summaries, laboratory results, CT scan and x-ray readings, electrocardiograms and laboratory results. Decision and Order at 4; Director’s Exhibits 11, 29, 30. She gave no weight to “intermittent” references to a “history” of pneumoconiosis, black lung disease, silicosis or anthracosis, contained in those records. Decision and Order at 10. The administrative law judge further noted that the miner’s death certificate, signed by Dr. Desai at the VA Medical Center, listed the causes of the miner’s death as “[c]ardiac arrhythmia” and “myocardial infarction” but made no mention of pneumoconiosis. *Id.* at 11. Thus, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

In accordance with *Penn Allegheny Co. v. Williams*, 114 F.3d 22, 25, 21 BLR 2-104, 2-112 (3d Cir. 1997), the administrative law judge weighed all of the relevant evidence together, and determined that claimant failed to establish the existence of pneumoconiosis. Specifically, the administrative law judge rejected the positive x-ray evidence, based on Dr. Spagnolo’s suggestion that Dr. Smith may have misread the miner’s x-rays as positive. Decision and Order at 14. Thus, the administrative law judge found that claimant failed to establish that the miner had pneumoconiosis, a requisite element of entitlement in the miner’s subsequent claim and in the survivor’s claim, and she denied benefits in both claims. *Id.*

Initially, we reject claimant’s assertion that the administrative law judge “woefully understated” her hearing testimony with regard to the miner’s physical condition. Claimant’s Memorandum of Law in Support of Petition for Review (unpaginated) [at 3]. The administrative law judge specifically noted that claimant testified that her husband “was in *extremely* ill health and had *severe* breathing problems,” and “any exertion, such as climbing stairs, left him exhausted.” Decision and Order at 3 (emphasis added).

¹⁰ The administrative law judge further noted that the parties did not present any evidence to establish the reliability of the CT scans as a means for determining the presence or absence of pneumoconiosis. Decision and Order at 13; see 20 C.F.R. §718.107.

We also reject claimant's argument that the administrative law judge failed to properly consider the miner's treatment and hospitalization records. The administrative law judge permissibly gave little weight to references in those records that the miner had a "history" of pneumoconiosis, since there is no indication whether the history was provided by the miner, based on his own belief that he suffered the disease, or by a physician, based on a reasoned and documented assessment. Decision and Order at 10-11; *Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97, 22 BLR 2-386, 2-396 (3d Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Moreover, the administrative law judge accurately noted that, while the treatment records indicate that the miner underwent "a number of [x]-ray interpretations and CT scan reports," which identified abnormalities in his lungs, those "reports do not address whether these abnormalities are pneumoconiotic." Decision and Order at 11. Thus, we see no error in the administrative law judge's finding that the miner's treatment and hospitalization records are insufficient to establish the existence of pneumoconiosis.

We also reject claimant's assertion that the administrative law judge erred in her consideration of the biopsy evidence at 20 C.F.R. §718.202(a)(2). Contrary to claimant's contention, the administrative law judge properly found that the April 19, 2005 biopsy finding of anthracotic pigmentation was insufficient to establish that the miner had clinical pneumoconiosis, since there was no description in the report of a "fibrotic reaction" to that pigmentation in the miner's lungs.¹¹ Decision and Order at 12-13; *see* 20 C.F.R. §718.201(a)(2); *Balsavage*, 295 F.3d at 396-97, 22 BLR at 2-396; *Clark*, 12 BLR at 1-153. Additionally, although Dr. Levinson indicated that a July 31, 2008 progress note from the VA Medical Center, referenced a biopsy finding of "silicosis with fibrosis" by Dr. Vo, the administrative law judge specifically determined that the actual biopsy report was not in the record before her. Director's Exhibit 1; Decision and Order at 12-13. We conclude that the administrative law judge acted within her discretion in finding that Dr. Levinson's "second-hand mention of a biopsy report" is insufficient to establish the existence of clinical pneumoconiosis, and we affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2). *See Clark*, 12 BLR at 1-153; Decision and Order at 13.

With respect to the weight accorded Dr. Levinson's opinion at 20 C.F.R. §718.202(a)(4), we reject claimant's assertion that Dr. Levinson's opinion establishes that the miner had clinical pneumoconiosis. Since the administrative law judge specifically found that the CT scan and biopsy evidence failed to establish the existence of pneumoconiosis, she reasonably concluded that Dr. Levinson's opinion, that the miner

¹¹ The regulation at 20 C.F.R. §718.202(a)(2) states, in pertinent part, that "[a] finding in an autopsy or biopsy of anthracotic pigmentation . . . shall not be sufficient, by itself, to establish the existence of pneumoconiosis." 29 C.F.R. §718.202(a0(2).

had pathological evidence for pneumoconiosis, based on that same evidence, was not credible. Decision and Order at 13; *Balsavage*, 295 F.3d at 396-97, 22 BLR at 2-396; *Clark*, 12 BLR at 1-153.

However, we agree with claimant that, in weighing all of the contrary probative evidence together at 20 C.F.R. §718.202(a), the administrative law judge did not adequately explain her decision to discount the positive x-ray evidence.¹² The administrative law judge gave little weight to the positive x-ray readings by Dr. Smith, based on the medical opinion of Dr. Spagnolo. She explained:

To the extent Dr. Spagnolo's opinion that the [m]iner did not have pneumoconiosis is based on the fact that the [m]iner was only employed in the coal mine industry for three years, I find the opinion is not well-reasoned, and I give it little weight, because the governing regulation does not impose a minimum coal mine dust exposure level (or minimum coal mine employment history) for a finding of pneumoconiosis. However, I do give weight to Dr. Spagnolo's comment that Dr. Smith's [x]-ray interpretations may have mistaken the indicia of congestive heart failure for indicia of pneumoconiosis. As noted above, Dr. Smith's interpretations were based on [x]-rays taken shortly before the [m]iner's death. As the medical treatment records clearly establish, the [m]iner suffered from congestive heart failure for a significant time period before he died. It is not clear, from the record before me, what knowledge Dr. Smith had of the [m]iner's health history. As Dr. Spagnolo is Board-certified in internal medicine and pulmonary disease, I conclude that he would likely have specific knowledge as to how congestive heart failure is manifested on chest [x]-rays. Because it is not clear whether Dr. Smith's interpretation took the [m]iner's history of congestive heart failure into consideration, I give Dr. Smith's [x]-ray interpretations, which were positive for pneumoconiosis, less weight than I give to the other interpretations.

Decision and Order at 14.

There is merit to claimant's assertion that the administrative law judge erred in relying on Dr. Spagnolo's opinion to discredit the positive x-ray evidence. We agree with claimant that the administrative law judge failed to properly address whether Dr.

¹² Contrary to claimant's assertion, the administrative law judge properly considered Dr. Spagnolo's criticisms of the positive x-ray readings in her overall consideration of the evidence at 20 C.F.R. §718.202(a). See *Penn Allegheny Co. v. Williams*, 114 F.3d 22, 25, 21 BLR 2-104, 2-112 (3d Cir. 1997).

Spagnolo's opinion is speculative, as to the credibility of the positive x-ray readings by Dr. Smith, given that Dr. Spagnolo did not personally review either the October 9 or the October 14, 2008 x-ray, and he did not specifically "explain how congestive heart failure [w]ould appear on x-rays and somehow be mistaken for pneumoconiosis."¹³ Claimant's Memorandum of Law in Support of Petition for Review (unpaginated) [at 6]; *see Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 882, 22 BLR 2-25, 2-42 (6th Cir. 2000); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997) (The mere statement of a conclusion by a physician, without any explanation of the basis for that statement, does not take the place of the required reasoning). Although the administrative law judge has broad discretion in determining the weight to accord evidence, she cannot rely on Dr. Spagnolo's credentials to discredit the positive x-ray readings without first determining whether Dr. Spagnolo's opinion is reasoned and documented. *See Balsavage*, 295 F.3d at 396-97, 22 BLR at 2-396; *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *Clark*, 12 BLR at 1-153.

Additionally, although the administrative law judge stated that "it is not clear whether Dr. Smith's interpretation[s] took the [m]iner's congestive heart failure into consideration," she did not address the fact that Dr. Smith specifically indicated on the ILO classification sheets for both x-rays that there were "other significant abnormalities," in addition to pneumoconiosis, that were suggestive of congestive heart failure. Director's Exhibit 12. The administrative law judge also did not adequately explain why she found Dr. Spagnolo, who is not a radiologist, to be more qualified than Dr. Smith, a Board-certified radiologist and B reader, in identifying x-ray changes consistent with pneumoconiosis. On remand, the administrative law judge should consider whether Dr. Smith's interpretations reflect his belief that the miner was in congestive heart failure, but also had opacities for pneumoconiosis. Thus, because the administrative law judge has failed to rationally explain her credibility determinations in accordance with the Administrative Procedure Act,¹⁴ we vacate the denial of benefits in the miner's claim and remand this case for further consideration. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

¹³. We reject claimant's argument that Dr. Spagnolo's opinion constitutes an "inadmissible x-ray reading," in violation of the evidentiary limitations, as he did not personally review the miner's x-rays.

¹⁴ The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 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).

On remand, the administrative law judge must first determine, with regard to the miner's subsequent claim, whether claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. If so, the administrative law judge must weigh all of the record evidence, including the evidence from the miner's prior claim, relevant to the requisite elements of entitlement. Pursuant to 20 C.F.R. §718.202(a)(1), we instruct the administrative law judge to resolve the conflict in the x-ray evidence and determine whether claimant established the existence of pneumoconiosis under that subsection.¹⁵ The administrative law judge should also consider whether claimant established the existence of either clinical or legal pneumoconiosis¹⁶ pursuant to 20 C.F.R. §718.202(a)(4).¹⁷ As necessary, the administrative law judge must also address whether Dr. Spagnolo offered a reasoned and documented opinion regarding the credibility of the positive x-ray evidence. If the administrative law judge finds that the overall weight of the evidence is sufficient to establish the existence of either clinical or legal pneumoconiosis at 20 C.F.R. §718.202(a), she must then determine whether claimant has established that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c).

II. The Survivor's Claim

The administrative law judge determined that because the miner did not have pneumoconiosis, claimant was unable to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 14-15. Because we have vacated the administrative law judge's findings in the miner's claim pursuant to 20 C.F.R. §718.202(a)(1), (4), we also vacate her denial of benefits in the

¹⁵ On remand, the administrative law judge should resolve whether the October 9, 2008 x-ray is "unreadable," as stated by Dr. Navani, or positive for pneumoconiosis, as interpreted by Dr. Smith. Director's Exhibits 10, 12. She must also resolve the conflict in the readings of the October 14, 2008 x-ray and determine whether that x-ray is positive, negative or in equipoise as to the existence of pneumoconiosis.

¹⁶ Legal pneumoconiosis is defined in 20 C.F.R. §718.201(a)(2) as "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2).

¹⁷ The administrative law judge should address on remand whether Dr. Levinson's opinion, that claimant's pulmonary function studies and oxygenation levels show a disabling impairment consistent with coal dust exposure, is sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant's Exhibit 1.

survivor's claim. On remand, as necessary, the administrative law judge should reconsider whether claimant has established that the miner's death was due to, or substantially contributed to by pneumoconiosis, pursuant to 20 C.F.R. §718.205(c). 20 C.F.R. §718.205(c)(5); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge