

U.S. Department of Labor

Benefits Review Board  
P.O. Box 37601  
Washington, DC 20013-7601



BRB Nos. 15-0100 BLA  
and 15-0100 BLA-A

HAZEL C. SMITH	)	
(Widow of EDWARD W. SMITH)	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
ELKAY MINING COMPANY	)	
	)	DATE ISSUED: 02/23/2016
Employer-Petitioner	)	
Cross-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order and Decision on Reconsideration of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

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

HALL, Chief Administrative Appeals Judge:

Employer appeals, and claimant<sup>1</sup> cross-appeals, the Decision and Order and Decision on Reconsideration (12-BLA-5585) of Administrative Law Judge Richard A. Morgan awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on January 7, 2011.

After crediting the miner with thirty-four years of underground coal mine employment,<sup>2</sup> the administrative law judge found that the evidence established the existence of complicated pneumoconiosis. Consequently, the administrative law judge found that claimant invoked the irrebuttable presumption that the miner's death was due to pneumoconiosis provided at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). The administrative law judge further found that claimant established that the miner's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, the administrative law judge awarded benefits. By Decision on Reconsideration dated November 26, 2014, the administrative law judge ordered that benefits commence as of July 2009, the month of the miner's death.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief. In her cross-appeal, claimant argues that the administrative law judge erred in failing to discredit Dr. Scott's negative x-ray interpretation based upon the doctor's affiliation with Johns Hopkins University. In a response brief, employer contends that the administrative law judge permissibly declined to accord less weight to Dr. Scott's x-ray interpretation based upon his affiliation with Johns Hopkins University. The Director has not filed a response to claimant's cross-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

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<sup>1</sup> Claimant is the widow of the miner, who died on July 13, 2009. Director's Exhibit 12.

<sup>2</sup> The record reflects that the miner's last coal mine employment was in West Virginia. Hearing Transcript at 15. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on survivors’ claims when the miner’s death is due to pneumoconiosis. See 20 C.F.R. §§718.1, 718.205; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner’s death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner’s death, pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death, death was caused by complications of pneumoconiosis, the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304 is applicable, or the presumption set forth at 20 C.F.R. §718.305 is invoked and not rebutted. 20 C.F.R. §718.205(b)(1)-(4).

### **Complicated Pneumoconiosis**

Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner’s death was due to pneumoconiosis if the miner was suffering from a chronic dust disease of the lung which (a) when diagnosed by x-ray, yields one or more 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, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). See 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” 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 that 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. *E. Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). In determining whether claimant has established invocation of the irrebuttable presumption of death 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 2-1143, 1145-46 (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).

## The Administrative Law Judge's Findings

Because the record does not contain any analog x-ray interpretations classified in accordance with the requirements of the ILO-UC system, or any biopsy or autopsy evidence, the administrative law judge accurately determined that there was no evidence to consider pursuant to 20 C.F.R. §718.304(a), (b). Decision and Order at 13. The administrative law judge, however, found that the record contained relevant evidence to consider pursuant to 20 C.F.R. §718.304(c).

The administrative law judge initially considered two interpretations of a digital x-ray submitted pursuant to 20 C.F.R. §718.107, taken on June 24, 2009, less than one month before the miner's death. Dr. Miller, a Board-certified radiologist and B reader, interpreted the digital x-ray as positive for complicated pneumoconiosis (2/3, size A large opacities). Director's Exhibit 28. Dr. Miller specifically found that the x-ray revealed "bilateral upper lung large opacities with a combined size of less than five centimeters that are compatible with complicated pneumoconiosis (A)." *Id.* However, Dr. Scott, an equally qualified physician, interpreted the digital x-ray as negative for both simple and complicated pneumoconiosis. Employer's Exhibit 2. Dr. Scott opined that the x-ray revealed "small bilateral pleural effusion and pulmonary vascular congestion compatible with [congestive heart failure]." *Id.* Dr. Scott explained that "[i]n the presence of this much [congestive heart failure] one could not see small opacities even if they were present." *Id.*

The administrative law judge also considered Dr. Basheda's medical opinion. The administrative law judge noted that Dr. Basheda, like Dr. Scott, questioned whether an x-ray taken one month prior to the miner's death, at a time when the miner was suffering from pulmonary edema, could be relied upon to support a diagnosis of complicated pneumoconiosis.<sup>3</sup> Decision and Order at 14; Employer's Exhibit 3 at 13-14. The administrative law judge noted employer's argument that "Dr. Scott's reasoning is consistent with Dr. Basheda's explanation that the [June 24, 2009] x-ray must be

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<sup>3</sup> The administrative law judge noted that Dr. Basheda reviewed Dr. Smith's interpretation (not of record) of another x-ray taken on June 24, 2009, the same date that the digital x-ray was taken. Decision and Order at 14. Although Dr. Basheda acknowledged that Dr. Smith interpreted the x-ray as revealing size B large opacities, Dr. Basheda noted that the "x-ray occurred in the setting of acute respiratory compromise with acute pulmonary edema requiring mechanical ventilation and intensive unit care." Employer's Exhibit 3 at 13. Dr. Basheda opined that Dr. Smith's interpretation of coal workers' pneumoconiosis "may be flawed due to this acute cardiopulmonary process." *Id.* at 14.

contextualized within the miner's hospitalization for acute pulmonary edema superimposed on a chronic interstitial process." Decision and Order at 13.

In response to employer's assertion, the administrative law judge considered whether there was any x-ray evidence that the miner suffered from large opacities prior to the time in 2009 that he was suffering from the effects of acute pulmonary edema and congestive heart failure. In this regard, the administrative law judge noted that the miner's medical treatment records included a September 22, 2006 x-ray that was interpreted as revealing a 1.1 centimeter nodule in the miner's left upper lobe. Decision and Order at 13-14; Director's Exhibit 14. The administrative law judge also considered a June 5, 2008 x-ray that was interpreted as revealing "nodular densities throughout both lungs which are thought to be related to occupational pneumoconiosis." *Id.* The administrative law judge noted that the physician who interpreted the June 5, 2008 x-ray identified the development of two new densities in the miner's left chest since the September 22, 2006 x-ray, an "ill-defined density in the left upper lobe," and a "second area in the left mid lung zone which is more prominent than on the earlier examination." *Id.* The administrative law judge noted that the 2006 and 2008 x-rays were taken at a time *before* the miner suffered from acute pulmonary edema and congestive heart failure. *Id.* The administrative law judge, therefore, found that the x-ray evidence contained in the miner's treatment records was consistent with Dr. Miller's positive interpretation of the June 24, 2009 digital x-ray.<sup>4</sup> *Id.*

The administrative law judge further found that "Dr. Basheda failed to sufficiently explain why a positive interpretation for complicated pneumoconiosis in June 2009 should be scuttled because of acute pulmonary edema when the same record reviewed by Dr. Basheda suggests complicated pneumoconiosis earlier in time and under conditions which do not indicate that the miner was suffering from acute pulmonary edema."<sup>5</sup> Decision and Order at 14. The administrative law judge observed that Dr.

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<sup>4</sup> Given the progressive and irreversible nature of pneumoconiosis, the administrative law judge found that Dr. Miller's x-ray interpretation, a finding of large opacities with a combined size of less than five centimeters, was consistent with an interpretation of an x-ray taken three years earlier that revealed a 1.1 centimeter nodule. Decision and Order at 13-14; Director's Exhibit 14.

<sup>5</sup> The administrative law judge noted that the September 22, 2006 x-ray was taken at a time when the miner was being treated for hematemesis (the vomiting of blood), not pulmonary edema, the presence of which Drs. Scott and Basheda relied upon to exclude a diagnosis of pneumoconiosis. Decision and Order at 13. A review of the record reveals that the miner's September 22, 2006 x-ray was taken before the miner underwent a surgical procedure (aortic iliofemoral angioplasty), not for treatment for hematemesis. It

Basheda acknowledged that he reviewed chest x-rays “from as far back as 2006 [] describing a diffuse interstitial process with possible left upper lobe 1.1 cm. lung nodule.” Decision and Order at 14, *quoting* Employer’s Exhibit 3 at 13. Because the miner’s treatment records include x-ray evidence of a 1.1 centimeter nodule three years before the miner began receiving treatment for his acute pulmonary edema and congestive heart failure, the administrative law judge credited Dr. Miller’s positive interpretation of the miner’s June 24, 2009 digital x-ray over Dr. Scott’s contrary negative interpretation. Decision and Order at 14.

## **Discussion**

Employer argues that the administrative law judge erred in finding that the x-ray evidence found in the miner’s treatment records supported Dr. Miller’s positive interpretation of the June 24, 2009 digital x-ray. Employer contends that the administrative law judge improperly “assume[d], without support, that all one-centimeter nodules or densities evident on [the earlier] chest x-rays represent progressive massive fibrosis or complicated coal workers’ pneumoconiosis.” Employer’s Brief at 6-7. Employer misinterprets the administrative law judge’s analysis. Although the administrative law judge noted that the miner’s September 22, 2006 x-ray revealed a 1.1 centimeter nodule in the miner’s left upper lobe, and that the miner’s June 5, 2008 x-ray revealed additional densities in the miner’s left chest, he did not find that these x-rays established complicated pneumoconiosis. Rather, the administrative law judge relied upon the September 22, 2006 x-ray as evidence that a 1.1 centimeter nodule existed in the miner’s left lung *before* the miner suffered from acute pulmonary edema and congestive heart failure, conditions that Drs. Scott and Basheda opined would prevent an accurate interpretation of the miner’s 2009 x-rays. The administrative law judge also noted that the miner’s June 5, 2008 x-ray was interpreted as, *inter alia*, indicating “nodular densities throughout both lungs thought to be related to occupational pneumoconiosis.” Decision and Order at 9; Director’s Exhibit 14. Thus, contrary to employer’s assertion, the administrative law judge did not base his finding of complicated pneumoconiosis on the 2006 and 2008 x-rays found in the miner’s treatment records, but on a permissible evaluation of all of the evidence of record. *See Scarbro*, 220 F.3d at 256, 22 BLR at 2-93, 2-100 (explaining that, in an administrative law judge’s analysis of whether a miner

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was the miner’s June 5, 2008 x-ray that was taken when the miner was being treated for hematemesis. Nevertheless, the administrative law judge’s observation, that there is no indication that the miner was suffering from, or being treating for, acute pulmonary edema or congestive heart failure at the time that either of these x-rays was taken, is supported by substantial evidence. Director’s Exhibit 14.

has established complicated pneumoconiosis, “all of the evidence must be considered and evaluated to determine whether the evidence as a whole indicates a condition of such severity that it would produce opacities greater than on centimeter in diameter on an x-ray”).

Employer also contends that the administrative law judge erred in his consideration of the medical opinions of Drs. Castle and Basheda. We disagree. Although Dr. Castle opined that there “were no descriptions indicative of complicated pneumoconiosis,” the administrative law judge acted within his discretion in discounting the doctor’s opinion because he found that it was based upon an incomplete review of the available medical evidence. Because Dr. Castle did not review the evidence found by the administrative law judge to be the most probative of the existence of complicated pneumoconiosis, the interpretations by Drs. Miller and Scott of the miner’s June 24, 2009 digital x-ray, the administrative law judge permissibly accorded his opinion less weight. *See Milburn Colliery Coal Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); Decision and Order at 14; Employer’s Exhibit 1. For the reasons previously discussed, the administrative law judge also permissibly accorded less weight to Dr. Basheda’s opinion.<sup>6</sup>

After reviewing all of the relevant evidence, the administrative law judge permissibly found that Dr. Miller’s positive interpretation of the June 24, 2009 digital x-

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<sup>6</sup> Employer notes that Dr. Basheda, a Board-certified pulmonologist, provided multiple possible etiologies for the miner’s radiographic changes. The administrative law judge noted that, in addition to acute pulmonary edema and congestive heart failure, Dr. Basheda put forth two additional “possibilities” for the miner’s radiographic changes: rheumatoid arthritis and adult respiratory distress syndrome. Decision and Order at 8; Employer’s Exhibit 3. The administrative law judge further noted that Dr. Basheda also acknowledged that the miner’s radiographic changes could be attributable to “coal workers’ pneumoconiosis with a large opacity.” *Id.* Because Dr. Basheda ultimately concluded that there was insufficient information in the record to enable him to define the miner’s pulmonary parenchymal process, his opinion does little to weaken Dr. Miller’s finding of large opacities that satisfied the definition of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 286, 24 BLR 2-269, 2-286 (4th Cir. 2010). In this regard, it is noteworthy that Dr. Basheda, like Dr. Castle, did not review the evidence found most probative by the administrative law judge, the digital x-ray evidence of record. *Id.* Moreover, neither of the two Board-certified radiologists who interpreted the miner’s June 24, 2009 digital x-ray, Dr. Miller or Dr. Scott, interpreted the x-ray as revealing changes compatible with rheumatoid arthritis or adult respiratory distress syndrome.

ray, when considered in light of the other x-ray evidence, was better supported than Dr. Scott's negative x-ray reading,<sup>7</sup> and was sufficient to establish the existence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010). This finding is supported by substantial evidence. Because employer does not raise any additional contentions of error regarding the administrative law judge's finding that claimant established invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304, this finding is affirmed.

Finally, because it is unchallenged on appeal, we affirm the administrative law judge's finding that employer did not rebut the presumption that the miner's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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<sup>7</sup> Because we affirm the administrative law judge's finding that Dr. Miller's positive interpretation of the miner's June 24, 2009 digital x-ray, when considered in light of the other x-ray evidence, was better supported than Dr. Scott's negative x-ray interpretation, we need not address the arguments raised in claimant's cross-appeal that Dr. Scott's negative x-ray interpretation should have been discounted for other reasons. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Accordingly, the administrative law judge's Decision and Order and Decision on Reconsideration awarding benefits are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

I concur.

RYAN GILLIGAN  
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to affirm the administrative law judge's finding that claimant established invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304. I specifically dissent from the majority's decision to affirm the administrative law judge's finding that the digital x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c).

In crediting Dr. Miller's positive interpretation of the June 24, 2009 x-ray over Dr. Scott's contrary interpretation, the administrative law judge selectively reviewed the evidence. Specifically, in finding that the x-ray evidence found in the miner's treatment records supported Dr. Miller's positive interpretation of the June 24, 2009 digital x-ray, the administrative law judge limited his consideration to only two of the numerous x-ray interpretations contained in the miner's treatment records. Although the administrative law judge accurately noted that the September 22, 2006 x-ray was interpreted as revealing a 1.1 centimeter nodule in the miner's left upper lobe, and that the June 5, 2008

x-ray was interpreted as revealing two densities in the miner's left chest, he did not address other x-ray interpretations contained in the miner's treatment notes that fail to identify any nodules or densities in the miner's lungs.

The administrative law judge also failed to reconcile differences between the interpretations of the September 22, 2006 and June 5, 2008 x-rays. For example, the physician who interpreted the September 22, 2006 x-ray identified a 1.1 centimeter nodule in the miner's left upper lobe. Director's Exhibit 14. By contrast, the physician who interpreted the June 5, 2008 x-ray did not provide any measurements, identifying only an "ill-defined density in the left upper lobe," and a second density in "the left mid lung zone."<sup>8</sup> *Id.* Moreover, the physician who interpreted the June 5, 2008 x-ray made new findings, noting that the density that he found in the miner's left upper lobe "ha[d] developed *since* the chest x-ray of [September 22, 2006]."<sup>9</sup> *Id.* (emphasis added). The administrative law judge also did not address the fact that a consulting physician who reviewed the June 5, 2008 x-ray interpretation, noted that an occult neoplasm should be ruled out.<sup>10</sup> *Id.*

The administrative law judge further failed to adequately explain the basis for his finding that Dr. Miller's x-ray interpretation is "consistent with" the interpretations of the September 22, 2006 and June 5, 2008 x-rays. Decision and Order at 14. Dr. Miller specifically found that the June 24, 2009 digital x-ray revealed "bilateral upper lung large opacities with a combined size of less than five centimeters that are compatible with complicated pneumoconiosis (A)." Director's Exhibit 28. However, neither the September 22, 2006 x-ray, nor the June 5, 2008 x-ray, was interpreted as revealing bilateral large opacities, and only one of the x-rays, the September 22, 2006 x-ray, was interpreted as revealing a nodule greater than one centimeter in diameter. Because neither of the x-rays was interpreted as positive for complicated pneumoconiosis, the administrative law judge failed to adequately explain his basis for finding that the

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<sup>8</sup> The physician who interpreted the June 5, 2008 x-ray acknowledged that one of the densities "could be a combination of normal shadows." Director's Exhibit 14.

<sup>9</sup> Despite the fact that the physician interpreting the June 5, 2008 x-ray reported new results, the administrative law judge equated the findings of the September 22, 2006 and June 5, 2008 x-rays, and further assumed they demonstrated findings consistent with those of Dr. Miller.

<sup>10</sup> The consulting physician found it "concerning that [the miner] . . . had a 30 pound weight loss in the past year and abnormal lesions in the lungs." Director's Exhibit 14.

“treatment records show complicated pneumoconiosis.”<sup>11</sup> Decision and Order at 14; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

By focusing on only some of the x-ray interpretations contained in the miner’s treatment records, the administrative law judge engaged in an impermissible selective analysis. See *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984). Moreover, in finding that Dr. Miller’s positive interpretation of the June 24, 2009 digital x-ray was supported by x-ray interpretations contained in the miner’s treatment records showing complicated pneumoconiosis, the administrative law judge made an improper medical conclusion. *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987). Finally, the administrative law judge erred in not adequately addressing other relevant evidence, specifically, the analyses and alternative explanations proffered by Drs. Basheda and Castle, who each emphasized that the nodules seen on the miner’s x-rays could be attributable to rheumatoid lung disease, and that the evidence was insufficient for a diagnosis of coal workers’ pneumoconiosis. See *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 1145-46 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc). In particular, the administrative law judge failed to consider that both doctors reviewed claimant’s medical record evidence, including the treatment record x-ray reports that the administrative law judge used to determine that Dr. Miller’s x-ray interpretation, rather than that of Dr. Scott, should be credited.<sup>12</sup>

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<sup>11</sup> The administrative law judge also not did not address the significance of the fact that the physicians who interpreted the September 22, 2006 and June 5, 2008 x-rays each suggested that follow-up CT scans should be obtained.

<sup>12</sup> Dr. Castle specifically noted:

The radiographic interpretations did not include any ILO classifications to determine whether or not [claimant] had pneumoconiosis or some other process. Nevertheless, he was noted to have interstitial findings including nodularity. There were no descriptions indicative of complicated pneumoconiosis.

Employer’s Exhibit 1 at 12.

Dr. Basheda concluded that there was “[i]nsufficient objective evidence to evaluate the diagnosis of coal worker’s pneumoconiosis,” that there was “no physiologic data available to evaluate pulmonary impairment or disability,” and that the “chest radiographic findings may have multiple etiologies.” Employer’s Exhibit 3 at 15. Dr.

In light of the above-referenced errors, I would vacate the administrative law judge's determination that the digital x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c), and remand the case for further consideration.

JUDITH S. BOGGS  
Administrative Appeals Judge

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Basheda further concluded that there was “[n]o pathologic, physiologic, or radiographic data to validate a diagnosis of emphysema or COPD.” *Id.* Dr. Basheda also cautioned that the interpretation of an x-ray taken on June 24, 2009 (the date of the digital x-ray read by Drs. Miller and Scott) may be flawed by an acute cardiopulmonary process, and suggested that the first of several possible explanations for the chest radiographic changes observed in claimant's late June and early July 2009 x-rays was “acute pulmonary edema/congestive heart failure in the setting of his significant cardiovascular disease.” *Id.* at 13-14.