

BRB No. 10-0310 BLA

AMBER F. WALSH)
(Widow of RONALD G. WALSH))
)
Claimant-Respondent)
)
v.)
)
BUFFALO MINING COMPANY) DATE ISSUED: 01/27/2011
)
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 Second Remand Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Douglas A. Smoot and William P. Margelis (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Rita A. Roppolo (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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Second Remand Award of Benefits (2004-BLA-06583) of Administrative Law Judge Daniel F. Solomon, with respect to a survivor's claim filed on July 8, 2003,¹ pursuant to the provisions of the Black Lung

¹ Claimant is the widow of the deceased miner, Ronald G. Walsh, who died on June 20, 2003. Director's Exhibit 16.

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).² This case is before the Board for a third time.³ Pursuant to the Board's most recent Decision and Order, the administrative law judge reconsidered the relevant evidence and again concluded that it was sufficient to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

Employer appeals, arguing that, by failing to comply with the Board's instructions on remand, the administrative law judge erred in his consideration of the evidence concerning death due to pneumoconiosis at 20 C.F.R. §718.205(c). Claimant has not responded to employer's appeal. The Director, Office of Workers' Compensation Programs, has declined to file a response brief 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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

² The Director, Office of Workers' Compensation Programs (the Director), filed a letter, noting that Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims, does not apply to the instant claim as it was filed prior to January 1, 2005. We agree with the Director and hold that the recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to this case, as the claim was filed prior to January 1, 2005.

³ In the Board's initial decision, it affirmed the administrative law judge's findings that the miner worked thirty-seven years in coal mine employment and suffered from pneumoconiosis arising out of his coal mine employment. *Walsh v. Buffalo Mining Co.*, BRB No. 06-0808 BLA, slip op. at 5 n.4 (July 20, 2007)(unpub.). However, the Board vacated the award of benefits, in its initial and second decisions, on the ground that the administrative law judge erred in his consideration of the evidence relevant to death due to pneumoconiosis at 20 C.F.R. §718.205(c). *Id.* at 7-8; *A.F.W. [Walsh] v. Buffalo Mining Co.*, BRB No. 08-0325 BLA, slip op. at 12 (Jan. 27, 2009)(unpub.).

⁴ The record reflects that the miner's coal mine employment was in Virginia. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or if claimant establishes invocation of the irrebuttable presumption of death due to pneumoconiosis. 20 C.F.R. §§718.205(c)(2), (4), 718.304. Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1992); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

I. The Administrative Law Judge's Findings on Second Remand

The administrative law judge credited Dr. Racadag's opinion, that the miner's pneumoconiosis hastened his death, over the contrary opinions of Drs. Naeye, Bush, Rosenberg, and Hippensteel. The administrative law judge determined that the opinions provided by employer's experts were "not as well-reasoned as Dr. Racadag's, who answers the central question in this case: whether death was hastened by pneumoconiosis."⁵ Decision and Order on Second Remand at 7. Therefore, the administrative law judge found that claimant established that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c).

II. Arguments on Appeal

A. Hastening Standard

⁵ In this case, there is no dispute that the miner suffered from pneumoconiosis and that the miner suffered from breathing difficulties before his death. As the Board noted in its most recent decision, the relevant issue is whether the miner's pneumoconiosis was of a sufficient degree to have impaired his breathing and, if so, whether it hastened the miner's death from lung cancer. *Walsh*, BRB No. 08-0325 BLA, slip op. at 4-5 n.7.

Employer argues that the administrative law judge erred by not requiring claimant to prove that coal workers' pneumoconiosis was a substantially contributing cause of death. Instead, employer contends that the administrative law judge "merely required the [c]laimant to show that the [m]iner was weakened [to] any degree by coal workers' pneumoconiosis." Employer's Brief at 11. Employer states that, although this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, the Board may "appropriately look to" the decision of the United States Court of Appeals for the Sixth Circuit in *Eastover Mining Company v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). *Id.* at 11 n.3. Employer notes that, in *Williams*, the Sixth Circuit held that "[l]egal pneumoconiosis only 'hastens' a death if it does so through a specifically defined process that reduces the miner's life by an estimable time." *Williams*, 338 F.3d at 517-18, 22 BLR at 2-655. Employer also cites the Sixth Circuit's holding in *Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 303, 24 BLR 2-257, 2-266 (6th Cir. 2010), that "a conclusory medical opinion that pneumoconiosis makes someone weaker, and therefore less resistant to some other trauma, is legally insufficient to meet the regulatory standard for proving death causation." Employer's Brief at 11-12. Employer concludes, therefore, that the administrative law judge has consistently misapplied the hastening standard by crediting Dr. Racadag's opinion because he addressed how pneumoconiosis weakened the miner.

Employer's contention has merit, in part. Although the Sixth Circuit's holding in *Williams* is not controlling in this case, the Department of Labor (DOL), in the preamble to the revised regulations, stated that 20 C.F.R. §718.205(c) requires that any contribution by pneumoconiosis to a miner's death be "direct" and have caused a "tangible impact." 65 Fed. Reg. 79,920, 79,950-51 (Dec. 20, 2000). Similarly, the Fourth Circuit held, under the prior version of 20 C.F.R. §718.205(c), that for an administrative law judge to credit a physician's opinion that pneumoconiosis hastened a miner's death, the physician must sufficiently explain the causal connection between the disease and the resulting death, and pneumoconiosis must have actually hastened the miner's death. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Shuff*, 967 F.2d at 979-80, 16 BLR at 2-92-93.

In this case, the administrative law judge did not apply the proper standard to Dr. Racadag's opinion. Instead, the administrative law judge concluded that claimant satisfied the hastening requirement, because "the record shows that the [m]iner was weakened by pneumoconiosis." Decision and Order on Second Remand at 8. Consequently, we must vacate his determination that Dr. Racadag's opinion is sufficient to establish that pneumoconiosis hastened the miner's death under 20 C.F.R. §718.205(c).

B. The Administrative Law Judge's Weighing of the Medical Evidence

1. Dr. Racadag's Report

The administrative law judge accorded greatest weight to Dr. Racadag's opinion because he was "the only physician in this record who rationally discusses weakness from pneumoconiosis." Decision and Order on Second Remand at 5. The administrative law judge also found that Dr. Stoll's records supported Dr. Racadag's opinion. *Id.* at 6. The administrative law judge cited records from Logan Regional Medical Center on May 18-19, 2003, as showing that the miner had respiratory problems and that a bronchoscopy was performed. *Id.* The administrative law judge further noted that records from St. Anthony's Hospital from June 16-19, 2003, identify Dr. Stoll as the attending physician and indicate that the miner's condition was "grave." *Id.*; Director's Exhibit 22. The administrative law judge reported that the diagnoses in the record of this hospital admission included advanced metastatic lung cancer, severe bone pain likely due to the cancer, atrial fibrillation with rapid ventricular response, chronic obstructive pulmonary disease [COPD], and a mass in the right middle and lower lobes, "secondary to lung cancer and possible pneumonia." Decision and Order on Second Remand at 6, *quoting* Director's Exhibit 22. The administrative law judge stated that, based on the material in Dr. Stoll's records, "Dr. Racadag is competent to determine that the respiratory problems weakened the miner's overall condition." Decision and Order on Second Remand at 6. The administrative law judge concluded:

I find that Dr. Racadag has sufficiently explained his rationale that the miner had simple coal workers' pneumoconiosis. He also had:

- Squamous cell carcinoma poorly differentiated with necrosis, left lobe of lung.
- Pulmonary congestion and edema.
- Acute bronchitis[.]
- Focal interstitial fibrosis.
- Severe pleural adhesions, bilateral.

[Dr. Racadag's] conclusion was that all of the listed diagnoses contributed to death. [Director's Exhibit] 18. In an answer to an interrogatory, he explained that the pneumoconiosis made breathing difficult. [Director's Exhibit 19] Therefore, I find that Dr. Racadag has provided a rationale consistent with the regulatory intent and find that the record shows that the [m]iner was weakened by pneumoconiosis[,] which hastened his cancer and other diseases as a result.

Id. at 7-8.

Employer argues that the administrative law judge erred in determining that Dr. Stoll's records support Dr. Racadag's conclusions. Employer maintains that the administrative law judge's finding ignores the Board's prior holding that none of the treatment records links coal workers' pneumoconiosis to the miner's breathing difficulties or other respiratory symptoms. In addition, employer contends that the administrative law judge "misrepresent[ed] the record by concluding that the [m]iner was diagnosed with a respiratory disorder as early as 1979," as there is no evidence in the record to support such an assertion. Employer's Brief at 16. Employer also alleges that the administrative law judge erred in citing positive chest x-rays as evidence that the miner suffered from a respiratory impairment related to pneumoconiosis.

The administrative law judge's finding that Dr. Stoll's *records* support Dr. Racadag's conclusion, that pneumoconiosis hastened the miner's death, is not in accord with the evidence, as Dr. Stoll did not diagnose either clinical or legal pneumoconiosis.⁶ Director's Exhibits 16, 22. Accordingly, the administrative law judge erred in finding that Dr. Stoll's records supported Dr. Racadag's determination that pneumoconiosis hastened the miner's death.

Furthermore, employer is correct in asserting that the administrative law judge did not adequately set forth the basis for findings that Dr. Racadag's opinion was consistent with record evidence reflecting a diagnosis of a respiratory disorder as early as 1979 and "[p]ositive chest x-rays." Decision and Order on Second Remand at 6. The administrative law judge did not identify the evidence to which he referred. Even assuming that there was a diagnosis of a respiratory disorder in 1979, the administrative law judge did not explain, as required by the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), 30 U.S.C. §932(a), how he determined that any respiratory disorder the miner had was related to pneumoconiosis.⁷ See *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1988).

⁶ The administrative law judge stated, "Although I am advised that I erred in finding that Dr. Racadag's opinion was supported by that of Dr. Stoll, actually I found that Dr. Stoll's records support Dr. Racadag's opinion." Decision and Order on Second Remand at 5-6.

⁷ 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 in 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).

Because the administrative law judge did not provide a valid rationale for according greater weight to Dr. Racadag's opinion regarding death causation at 20 C.F.R. §718.205(c), we vacate the administrative law judge's finding that Dr. Racadag's opinion is entitled to greatest weight under 20 C.F.R. §718.205(c). *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),

2. Dr. Naeye's Report

Employer also argues that the administrative law judge's rationale for discrediting Dr. Naeye's opinion regarding the cause of the miner's death is erroneous because he ignored the Board's prior mandate that, "contrary to the administrative law judge's finding, Dr. Naeye addressed whether the miner's pneumoconiosis aggravated the primary cause of death, lung cancer." Employer's Brief at 27, *quoting Walsh*, BRB No. 08-0325 BLA, slip op. at 9. We agree. On remand, the administrative law judge stated, "[a]lthough [e]mployer argues that Dr. Naeye addressed whether the miner's pneumoconiosis aggravated the primary cause of death, lung cancer, I find that he failed to do so." Decision and Order on Second Remand at 6. However, as the Board indicated in its most recent decision, Dr. Naeye noted that the cause of the miner's death was squamous cell lung cancer. Employer's Exhibit 2 at 22. Dr. Naeye further opined that the degree of the miner's coal workers' pneumoconiosis "wouldn't have caused any impairments or disability at all," because "the lesions were too few and too small in diameter to cause any measurable impairments in lung function." *Id.* at 23-24. Dr. Naeye concluded that coal workers' pneumoconiosis did not play any role "whatsoever" in the miner's death. *Id.* at 24. Thus, because the administrative law judge, again, did not accurately characterize Dr. Naeye's opinion, we vacate his decision to discredit Dr. Naeye's opinion. *See Schoenecker v. Allegheny River Mining Co.*, 8 BLR 1-501 (1986); *Hunley v. Director, OWCP*, 8 BLR 1-323 (1985).

3. Dr. Bush's Report

Employer further asserts that the administrative law judge did not provide a valid rationale for discrediting Dr. Bush's opinion that pneumoconiosis did not hasten the miner's death. We agree. In making his findings at 20 C.F.R. §718.205(c), the administrative law judge determined:

[A]lthough Dr. Bush stated that the [m]iner had no respiratory deficit, [Employer's Exhibit 5], he was admitted to the hospital on May 18, 2003 with respiratory symptoms and was treated by Dr. Thavaradhara for same and was given a bronchoscopy. . . . When seen by Dr. Stoll at St. Anthony's Hospital, the diagnoses included COPD and pneumonia, respiratory disorders closely associated with pneumoconiosis. [Director's Exhibit] 22.

Decision and Order on Second Remand at 6. The administrative law judge did not address, however, the portion of Dr. Bush's report in which he stated:

Arterial blood gas values at the Logan Regional Medical Center admission of [May 17, 2003,] were normal. The evaluation by radiation oncologists showed absence of respiratory symptoms. Only terminally do the records indicate respiratory symptoms most reasonably attributed to showers of pulmonary emboli seen in the histologic slides.

Employer's Exhibit 5. In addition, there is no evidence in the record that Dr. Thavaradhara or Dr. Stoll attributed the miner's symptoms, or the diagnosed conditions to coal workers' pneumoconiosis or coal dust exposure. *See* Director's Exhibit 22. We must also vacate, therefore, the administrative law judge's decision to discredit Dr. Bush's opinion. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

4. The Reports of Drs. Hippensteel and Rosenberg

Employer contends that the administrative law judge erred in according less weight to the opinions of Drs. Hippensteel and Rosenberg, as the administrative law judge did not take into account the Board's previous determination that Drs. Hippensteel and Rosenberg addressed whether the miner's death was contributed to by pneumoconiosis. Employer is correct. The administrative law judge stated that he discredited the opinions of Drs. Hippensteel and Dr. Rosenberg because they were "not as well-reasoned as Dr. Racadag's, who answers the central question in this case: whether death was hastened by pneumoconiosis." Decision and Order on Second Remand at 7. In so finding, the administrative law judge noted that Dr. Hippensteel "was not asked whether pneumoconiosis . . . contributed to [the m]iner's overall health and to his weakened state." *Id.* With respect to Dr. Rosenberg's opinion, the administrative law judge stated that Dr. Rosenberg only assessed whether the miner had a respiratory or pulmonary condition "related to, or hastened by, his past coal dust exposure," rather than whether the miner's death was hastened by pneumoconiosis. *Id.* However, as the Board held in its most recent Decision and Order, Drs. Hippensteel and Rosenberg both addressed whether pneumoconiosis played a role in the miner's death. *Walsh*, BRB No. 08-0325 BLA, slip op. at 11-12. Dr. Hippensteel reported that the miner's coal workers' pneumoconiosis did not play any role in causing, contributing to, or hastening the miner's death. Employer's Exhibit 4 at 21. Dr. Rosenberg stated, "the events surrounding [the miner's] death were related to smoking-related lung cancer, which bore no relationship to his past employment," and indicated that coal dust exposure did not cause or hasten the miner's death. Employer's Exhibit 1. Thus, we must vacate the administrative law judge's decision to discredit the opinions of Drs. Hippensteel and Rosenberg. *See Schoenecker*, 8 BLR at 1-503; *Hunley*, 8 BLR at 1-326.

C. The Extent of the Miner's Pneumoconiosis

Employer also argues that the administrative law judge irrationally refused to accept that coal workers' pneumoconiosis, evident on autopsy, could be minimal and of an insufficient degree to hasten the miner's death. Employer also asserts that the administrative law judge did not adequately resolve the conflict among Drs. Racadag, Naeye and Bush, concerning the size of the lesions of coal workers' pneumoconiosis present on the autopsy tissue slides.⁸ Employer contends that, contrary to the administrative law judge's findings, the size of the coal macules present is relevant to the degree of respiratory impairment, if any, due to coal workers' pneumoconiosis and to the issue of whether pneumoconiosis hastened the miner's death.

The administrative law judge indicated on remand that he did "not need to discuss the relative sizes of macules with respect to the Naeye opinion." Decision and Order on Second Remand at 6. The administrative law judge further stated:

Accepting *arguendo* that there were smaller amounts [of coal dust micronodules], in fact, "minimal" connotes "some," and whereas in a living miner's claim causation can be predicated on a small amount, expressed as "minimal" in one circuit, Drs. Bush and Naeye acknowledge that there was enough present to render a diagnosis of pneumoconiosis. I find this fact to be significant. There is also x-ray evidence to substantiate that fact.

Id. at 6 (footnotes omitted). We agree with employer that the administrative law judge's resolution of this issue was not proper, as the administrative law judge relied on his own conclusion that the diagnoses of simple pneumoconiosis by Drs. Naeye and Bush supported a finding that pneumoconiosis contributed to the miner's death. *See Marcum*

⁸ Dr. Racadag stated in the autopsy report that he found "black macules measuring up to 0.8 cm in maximum dimension more prominent in the upper lobe." Director's Exhibit 18. Dr. Naeye indicated, based on a review of the autopsy slides, that there was only a small amount of black pigment in the lung tissue and that "[t]he largest deposit is less than 1 mm in diameter." Director's Exhibit 20. Dr. Naeye opined that the mild, simple coal workers' pneumoconiosis present did not have "any measurable effect on the miner's lung function so it did not cause any disability or have any role in his death." *Id.*; Employer's Exhibit 2 at 19, 21. Dr. Bush also reviewed the autopsy slides and determined that there was only minimal evidence of coal workers' pneumoconiosis and that "[o]nly a few tiny coal micronodules measuring 0.1 cm in diameter [could] be found." Employer's Exhibit 5. Dr. Bush stated that he agreed with Dr. Naeye that "the evidence of coal mine dust disease was too limited to have contributed in any manner to death." *Id.*

v. Director, OWCP, 11 BLR 1-23 (1987). Contrary to the administrative law judge's determination, both physicians explicitly stated that the amount of coal workers' pneumoconiosis observed on the autopsy slides was insufficient to interfere with the miner's respiratory function or contribute to his death. Director's Exhibit 20; Employer's Exhibits 2, 5. We must vacate, therefore, the administrative law judge's finding that he was not required to resolve the conflict in the evidence concerning the extent of the miner's coal workers' pneumoconiosis. See *Wojtowicz*, 12 BLR at 1-165; *Schoenecker*, 8 BLR at 1-503.

In light of the meritorious allegations of error raised by employer, we vacate the administrative law judge's finding that claimant established that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c)(5), and the award of benefits, and remand this case for reconsideration of the opinions of Drs. Racadag, Naeye, Bush, Hippensteel and Rosenberg.

III. Remand Instructions

A. Assignment to a Different Administrative Law Judge

Employer requests that this case be remanded to a different administrative law judge because this case has reached the point of "administrative gridlock" due to the administrative law judge's failure to follow the Board's instructions. Employer's Brief at 32-33. This case has been remanded to the administrative law judge on two previous occasions. In his Second Decision and Order on Remand, the administrative law judge rendered findings based upon a characterization of the evidence that conflicted with the Board's holdings and continued to apply an inaccurate legal standard at 20 C.F.R. §718.205(c)(2), (5). We reluctantly conclude, therefore, that proper review of this case requires a fresh look at the evidence. *Hicks*, 138 F.3d at 537, 21 BLR at 2-343. Thus, we direct that this case be reassigned to a different administrative law judge on remand.

B. Consideration of the Evidence

On remand, the administrative law judge must determine, based on a review of all relevant evidence, whether claimant has established that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c)(5). In so doing, the administrative law judge must consider whether there is medical evidence that sufficiently explains the causal connection between pneumoconiosis and the miner's death, and that establishes that pneumoconiosis actually hastened the miner's death. See *Sparks*, 213 F.3d at 190, 22 BLR at 2-259; *Shuff*, 967 F.2d at 979-80, 16 BLR at 2-92-93. When weighing the conflicting medical opinions on remand, the administrative law judge must address the credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their

respective diagnoses. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. Lastly, the administrative law judge must set forth his or her findings in detail, including the underlying rationale, as required by the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order on Second Remand Award of Benefits is vacated and the case is remanded for further proceedings consistent with this opinion and for reassignment to another administrative law judge.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge