BRB No. 03-0840 BLA

FRANK M. LEMON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ZEIGLER COAL COMPANY	)	
	)	DATE ISSUED: 09/27/2004
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 Granting Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Gary B. Nelson, Cheryl L. Erdman, and Michael F. Dahlen (Feirich/Mager/Green/Ryan), Carbondale, Illinois, for employer.

Timothy S. Williams (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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 Granting Benefits (01-BLA-0884) of Administrative Law Judge Pamela Lakes Wood in a miner's 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 is before the Board for the third time. Initially, Administrative Law Judge Samuel B. Groner credited claimant[2] with nineteen years of coal mine employment. Director's Exhibit 32 at 1. Applying the regulations pursuant to 20 C.F.R. Part 727 (2000),[3] Judge Groner found that claimant established invocation of the interim presumption of total disability due to pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §727.203(a)(1) (2000), and determined that employer did not establish rebuttal of the presumption by any method provided at 20 C.F.R. §727.203(b) (2000). *Id.* at 2-3. Accordingly, the administrative law judge awarded benefits, commencing September 22, 1981. *Id.* at 3. Upon review of employer's appeal, the Board vacated the award of benefits and remanded the case for Judge Groner to reconsider invocation pursuant to Section 727.203(a)(1) (2000).[4] Director's Exhibit 34 at 1-2.

On remand, Judge Groner applied the true doubt rule and found invocation established at Section 727.203(a)(1) (2000). Director's Exhibit 36 at 2. Accordingly, Judge Groner again awarded benefits, commencing September 22, 1981. *Id.* After considering employer's second appeal, the Board affirmed Judge Groner's finding of Section 727.203(a)(1) (2000) invocation and affirmed the award of benefits. Director's Exhibit 39.

Employer appealed to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit court reversed the award of benefits, holding that it was not supported by substantial evidence. Director's Exhibit 40 at 9. However, the Seventh Circuit remanded the case "for further findings before a different ALJ." *Id.* The court stated that "[a]lthough the claimant has, as yet, failed to put forth substantial evidence demonstrating his entitlement to benefits, we believe he is entitled to pursue further

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

[2]Claimant is Frank M. Lemon, the miner, who filed his present claim for benefits on January 14, 1980. Director's Exhibit 1.

[3]The regulations contained in 20 C.F.R. Part 727 (2000) were not affected by the 2001 amendments to the regulations.

[4]The Board noted that Administrative Law Judge Groner may reinstate his 20 C.F.R. §727.203(b) (2000) rebuttal findings because employer did not challenge them on appeal. Director's Exhibit 34 at 2.

testing . . . so that he might be given the opportunity to establish the required proof . . . of his alleged pneumoconiosis." *Id.*

Subsequently, on September 28, 1994 the Board issued an order remanding this case to the Office of Administrative Law Judges for further consideration consistent with the Seventh Circuit's decision. Director's Exhibit 41. On March 6, 2000, Administrative Law Judge Thomas M. Burke issued an Order of Remand, stating that the record in this case was received on February 11, 2000.[5] Director's Exhibit 45. Judge Burke remanded the case to the district director for further evidentiary development in accordance with the Seventh Circuit's decision. *Id.* The district director returned the case to the Office of Administrative Law Judges on May 25, 2001. Director's Exhibit 73.

At the Office of Administrative Law Judges, the case came before Administrative Law Judge Pamela Lakes Wood (hereinafter, the administrative law judge) who noted the parties stipulated to "at least" forty years of coal mine employment, June 24, 2002 Hearing Transcript at 9. Decision and Order at 4. The administrative law judge found claimant established invocation of the interim presumption at Section 727.203(a)(2) and (a)(4) (2000) and failed to establish invocation at Section 727.203(a)(1) and (a)(3) (2000). *Id.* at 7-8, 12, 17. Additionally, the administrative law judge found that employer failed to establish rebuttal pursuant to Section 727.203(b) (2000). *Id.* at 18-21. Accordingly, benefits were awarded, commencing January 1, 1980. *Id.* at 21.

In its present appeal to the Board, employer contends that the administrative law judge erred in finding the x-ray evidence at Section 727.203(a)(1) (2000) to be in "equipoise." Employer's Brief at 34-38. Employer also asserts that the administrative law judge erred in finding that claimant established invocation pursuant to Section 727.203(a)(2) and (a)(4) (2000) and in finding that employer failed to establish rebuttal pursuant to Section 727.203(b)(2)-(b)(4) (2000). *Id.* at 38-59. Employer contends that the administrative law judge erred in determining the date from which benefits commence to be January 1980, the date when claimant filed his claim for benefits. *Id.* at 59-61. Finally, employer asserts that liability for this claim should be transferred to the Black Lung Trust Fund (Trust Fund) because the Department of Labor's (DOL) loss of claimant's file prejudiced employer and denied it due process. *Id.* at 62-67. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited

[5]The official claims file was misplaced from September 28, 1994, the date the Board issued its remand Order, until February 11, 2000, the date the file reached the Office of Administrative Law Judges.

response to employer's assertions.[6] Employer has filed a reply brief, reiterating the arguments set forth in its Petition for Review and brief.[7]

SECTION 727.203(a)(2) (2000) INVOCATION

Employer asserts that the administrative law judge erred in finding invocation established pursuant to Section 727.203(a)(2) (2000). Employer's Brief at 38-41. The record contains six pulmonary function studies dated March 10, 1980, September 14, 1981, October 22, 1996, October 24, 1997, September 8, 2000, and February 13, 2001. Under the Part 727 regulations, the pulmonary function studies taken in 1996, 1997, and 2000 produced qualifying[8] values. Director's Exhibits 47, 58, 60. The administrative law judge found the non-qualifying September 1981 pulmonary function study to be "entitled to little if any weight based upon the consensus of the criticisms submitted."[9] Decision and Order at 10. With regard to the qualifying October 1996 test, the administrative law judge found this test "is not in substantial compliance with the quality standards under the regulations."[10] *Id.* Moreover, the administrative law judge found the February 2001

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[6]The Director, Office of Workers' Compensation Programs (the Director), asserts that the Board should affirm the finding of Administrative Law Judge Pamela Lakes Wood (hereinafter, the administrative law judge) regarding the date for commencement of benefits and reject employer's assertion that it was prejudiced and denied due process because the Department of Labor misplaced claimant's file. Director's Brief at 2-4.

[7]We affirm the administrative law judge's findings regarding length of coal mine employment and pursuant to 20 C.F.R. §727.203(b)(1) (2000) because these findings are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[8]A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values found at 20 C.F.R. §727.203(a)(2) (2000). A "non-qualifying" study yields values that exceed those values.

[9]Drs. Anderson, Renn, and Tuteur found the September 14, 1981 pulmonary function study to be invalid. Director's Exhibit 27.

[10]The administrative law judge noted that Dr. Renn found the October 22, 1996 pulmonary function study to be invalid because it lacked the requisite number of tracings, Employer's Exhibit 8. Decision and Order at 10. The administrative law judge further noted a set of tracings appears on the reverse side of the pulmonary function study, but the parties' Joint Stipulation of Evidence indicates "No" under "Tracings," Director's Exhibit 60; Administrative Law Judge's Exhibit at 3. Decision and Order at 10 n.16.

study "provides insufficient information for application of the Part 727 criteria because it "does not contain a recorded MVV" value. *Id.*

The administrative law judge considered the remaining tests, a non-qualifying study dated March 10, 1980 and two qualifying tests dated October 24, 1997 and September 8, 2000. *Id.* at 10, 12. The administrative law judge found the 1997 and 2000 pulmonary function studies to be "entitled to additional weight because they have more probative value on the issue of Claimant's current condition" than the 1980 study. *Id.* at 12. Therefore, the administrative law judge found that claimant established invocation of the interim presumption pursuant to Section 727.203(a)(2) (2000). *Id.*

Employer contends that the administrative law judge erred by not applying the "current tables utilized by the DOL under the §718 regulations, which include age as a component." Employer's Brief at 39-41. In her Decision and Order, the administrative law judge addressed a similar argument raised by employer in its Post Hearing Brief. The administrative law judge rejected employer's assertion, stating that the criteria for invoking the interim presumption at 20 C.F.R. Part 727 (2000) "are based upon height only and do not include age." Decision and Order at 10. The administrative law judge stated that "the Part 727 regulations are applicable to this case, and I am constrained to follow them." *Id.* at 11. We reject employer's contention that the administrative law judge erred in failing to apply 20 C.F.R. Part 718 to determine whether the pulmonary function studies in the record yielded qualifying values. 20 C.F.R. Part 718 of the regulations is only applicable to claims filed after March 31, 1980. 20 C.F.R. §718.2. Because 20 C.F.R. Part 727 (2000) applies to the present claim, which was filed on January 14, 1980, the administrative law judge properly applied the criteria at Section 727.203(a) (2000) to determine whether the pulmonary function studies in this case were qualifying. 20 C.F.R. §§725.4(d), 727.200 (2000); *see Meyer v. Zeigler Coal Co.*, 894 F.2d 902, 13 BLR 2-285 (7th Cir. 1990), *cert. denied*, 498 U.S. 827 (l990).

Employer additionally asserts that the administrative law judge erred in disregarding the February 13, 2001 pulmonary function study because of insufficient data, as no MVV value is listed.[11] Employer's Brief at 40. Employer states that 20

[11]We reject employer's assertion that because the MVV value is not required at 20 C.F.R. §718.103, the administrative law judge erred in finding that the February 13, 2001 pulmonary function study contained insufficient information. While it is correct that Section 718.103 does not require that a pulmonary function study report an MVV value, an MVV value is necessary to determine whether a pulmonary function study is qualifying pursuant to 20 C.F.R. §727.203(a)(2) (2000). Therefore, it was reasonable, *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(*en banc*); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985), for the administrative law judge not to consider the February 13, 2001 pulmonary function study because it contained insufficient information.

C.F.R. §718.101 (2000), regarding the criteria for the development of medical evidence, provides that the standards for the administration of clinical tests apply to 20 C.F.R. Part 727 (2000) claims for tests conducted after January 19, 2001. *Id.* Employer further states that the February 2001 study should have been evaluated under 20 C.F.R. Part 718 because this test was developed after January 19, 2001. *Id.* Employer points out that "[u]nder the standards created for pulmonary function tests at §718.103, there is no requirement of an MVV." *Id.* Moreover, employer notes that claimant's February 2001 test would not qualify using the values from the 20 C.F.R. Part 718 tables. *Id.* at 41. Therefore, employer concludes that the administrative law judge's "failure to evaluate the 2001 pulmonary function study under the §718 regulations was contrary to law." *Id.* at 40.

We hold that employer's contentions regarding the February 13, 2001 pulmonary function study are without merit. As claimant asserts in his Response Brief, employer is mistaken about how the quality standards found at 20 C.F.R. §718.101 affect this claim. Section 718.101 states that the standards for the *administration* of clinical tests shall apply to 20 C.F.R. Part 727 (2000) claims for evidence developed after January 19, 2001. 20 C.F.R. §718.103 discusses the *criteria relevant* to the development of pulmonary function study evidence. Section 718.103(c) states that:

> no results of a pulmonary function study shall constitute evidence of the presence or absence of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with the requirements of this section and Appendix B to this part. In absence of evidence to the contrary, compliance with the requirements of Appendix B shall be presumed.

While Appendix B of Part 718 contains the quality standards and the tables of qualifying values for pulmonary function study evidence, it is clear from the text of Section 718.103(c), quoted above, that this regulation is only referring to the quality standards (and not the tables of qualifying values) applicable to pulmonary function studies found in Appendix B. *See generally Ramey v. Director, OWCP*, 326 F.3d 474, --- BLR --- (4th Cir. 2003)(Court relied on the plain meaning of the Black Lung Benefits Act to interpret regulation). In Part 718, 20 C.F.R. §718.204(b)(2)(i) refers to the qualifying values for pulmonary function studies contained in Tables B1-B6 in Appendix B. Because claimant's claim was filed on January 14, 1980, Section 718.204(b)(2) is not applicable to this case. *See* discussion, *supra*. Rather, the criteria for establishing the qualifying nature of pulmonary function studies for 20 C.F.R. Part 727 (2000) claims, which the administrative law judge properly applied, are found at Section 727.203(a)(2) (2000).

Additionally, employer asserts that the administrative law judge erred in failing to address claimant's lack of effort and cooperation, noted by Drs. Renn and Repsher in

regard to the October 24, 1997 and September 8, 2000 pulmonary function studies. Employer's Brief at 39; Employer's Reply Brief at 4. Dr. Renn, in his April 17, 2002 report, criticized all of the pulmonary function studies he reviewed as suboptimal because of claimant's effort.[12] Employer's Exhibit 8. At his deposition on June 20, 2002, Dr. Renn responded, "[y]eah," to the statement by employer's counsel that in the chart attached to his April 17, 2002 report, he found the October 24, 1997 test to show acceptable effort. Employer's Exhibit 17 at 10-11. On the chart attached to Dr. Renn's report, the date of the October 1997 pulmonary function study is highlighted and "VALID" is handwritten beneath the values of this test. Employer's Exhibit 8. Dr. Renn did not testify to any specific deficiencies regarding the September 8, 2000 study.[13] In his April 10, 2002 report, Dr. Repsher noted that claimant had "very poor" effort on the October 24, 1997 and September 8, 2000 tests. Employer's Exhibit 7 at Attachment C. At his deposition, Dr. Repsher testified that none of the pulmonary function studies show adequate effort or cooperation and specifically noted that the September 8, 2000 test is "invalid for accurate interpretation." Employer's Exhibit 15 at 6, 58. In his May 20, 2002 report, Dr. Tuteur noted that the October 24, 1997 and September 8, 2000 pulmonary function studies are valid. Employer's Exhibit 13. Dr. Cohen reviewed the October 1997 and September 2000[14] tests in his reports, dated September 28, 2000 and June 3, 2002, and found that they were sufficient to confirm that claimant "has mild obstructive lung disease with airtrapping and reduction in diffusion." Director's Exhibit 58; Claimant's Exhibit 7. Dr. Houser did not raise any issues concerning the validity of the October 24, 1997 study performed in conjunction with his report. Director's Exhibit 47.

Contrary to employer's contention, the administrative law judge thoroughly discussed the comments made by Drs. Renn and Repsher regarding the October 24, 1997

[12]As the administrative law judge noted, Dr. Renn criticized an August 9, 2000 pulmonary function study in his report. Decision and Order at 8 n.13. The administrative law judge further noted that there is no pulmonary function study of that date contained in the record and that "it is possible [Dr. Renn] is referring to the September 8, 2000 test." *Id.*

[13]Dr. Renn did not testify to any deficiencies relating to an August 9, 2000 pulmonary function study. *See* n.12, *supra*.

[14]The technician who administered the September 8, 2000 pulmonary function test noted that claimant's comprehension and cooperation were "very good." Director's Exhibit 58.

and September 8, 2000[15] pulmonary function studies. Decision and Order at 10. In doing so, the administrative law judge correctly noted, "[a]lthough invalidating other tests results, Dr. Renn would only go so far as [to] say that the October 24, 1997 test was suboptimal (but nevertheless valid) and Dr. Repsher's comments were similar." *Id.* at 10 n.17. After considering all of the relevant evidence, the administrative law judge, within her discretion as trier-of-fact, found that these "criticisms . . . are in the minority and do not provide a basis for invalidating the test results." *Id.*; *Dotson v. Peabody Coal Co.*, 846 F.2d 1134 (7th Cir. 1988)(citing *Zeigler Coal Co. v. Sieberg*, 839 F.2d 1280, 11 BLR 2-80 (7th Cir. 1988)); *Robinette v. Director, OWCP*, 9 BLR 1-154 (1986); *Runco v. Director, OWCP*, 6 BLR 1-945 (1984). Therefore, we affirm the administrative law judge's finding of Section 727.203(a)(2) (2000) invocation because it is based upon substantial evidence. *Peabody Coal Co. v. Vigna*, 22 F.3d 1388, 18 BLR 2-215 (7th Cir. 1994).

If an administrative law judge properly invokes the interim presumption pursuant to any subsection of Section 727.203(a) (2000), then any error in evaluating the evidence pursuant to another method of invocation at this section is harmless. *Cochran v. Consolidation Coal Co.*, 12 BLR 1-136 (1989); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Accordingly, because we affirm the administrative law judge's finding of invocation pursuant to Section 727.203(a)(2) (2000), we need not address employer's assertions regarding Section 727.203(a)(4) (2000) invocation. *Id.*

SECTION 727.203(a)(1) (2000) INVOCATION

Employer asserts that the administrative law judge erred in finding the x-ray evidence to be in "equipoise in discussing Section 727.203(a)(1) invocation." *Id.* at 34-38, 56-57. Employer notes that "[a]lthough the administrative law judge was correct in

[15]With regard to the September 8, 2000 pulmonary function study, the administrative law judge also noted that Dr. Dahhan testified at the June 18, 2002 deposition that this test was "technically" invalid because Dr. Cohen did not perform a post-bronchodilator study, Employer's Exhibit 16 at 29. In response to Dr. Dahhan's comments, the administrative law judge stated that a post-bronchodilator study is not a regulatory requirement, *see* 20 C.F.R. §410.430. Decision and Order at 10. The administrative law judge also noted that Dr. Cohen found Dr. Dahhan to be "simply wrong" to suggest a pulmonary function study is invalid because post-bronchodilator testing was not done, since the validity of a pulmonary function study does not require pre-bronchodilator and post-bronchodilator testing, Claimant's Exhibit 8. Decision and Order at 10.

not invoking the presumption at §727.203(a)(1)," her error in reviewing the x-ray evidence is prejudicial to employer at Section 727.203(b)(4) (2000) rebuttal. *Id.* at 37. Because of its impact on our Section 727.203(b)(4) (2000) rebuttal determination, we will address employer's Section 727.203(a)(1) (2000) assertions at invocation, rather than at subsection (b)(4) (2000) rebuttal.

Pursuant to Section 727.203(a)(1) (2000), the administrative law judge considered the numerous readings of the six x-rays, dated March 10, 1980, September 14, 1981, September 24, 1996, October 24, 1997, September 8, 2000, and January 17, 2001, contained in the record. Decision and Order at 6-7. The administrative law judge correctly noted that "for each x-ray, except for the first, two or more dually qualified [readers] . . . read the x-ray as positive while two or more dually qualified readers read the same x-ray as negative." *Id.* at 7. The administrative law judge stated that she did "not find it useful to resolve the issue by counting the number of negative readings and comparing them with the number of positive readings, as such is within the control of parties." *Id.* Therefore, the administrative law judge concluded that she found the x-ray evidence to be in "equipoise" because "the most qualified readers disagree as to the proper interpretation of each x-ray." *Id.*

The administrative law judge next referred to the language of the Seventh Circuit in this case in which the court stated that "the ALJ must attempt to weigh the x-ray readings 'by considering the age of the readings, the qualifications of the experts, the persuasiveness of their reports and any other relevant evidence.'" Director's Exhibit 40 at 8 (citing *Old Ben Coal Co. v. Battram*, 7 F.3d 1273, 18 BLR 2-42 (7th Cir. 1993)). In considering the "other relevant evidence," the administrative law judge noted that the record contains two negative interpretations of a CT scan taken on January 17, 2001 by Drs. Wiot and Spitz. Decision and Order at 7. The administrative law judge further noted that Dr. Wiot testified "in some detail [on] the interpretations of x-rays and CT scans and explains his negative findings." *Id.* However, the administrative law judge stated that she could not "weigh the persuasiveness of the remaining B readings, including all of the positive readings, because the remaining readers did not explain their radiological interpretations to any significant extent." *Id.* The administrative law judge concluded that claimant could not invoke the presumption at Section 727.203(a)(1) (2000) because "the additional evidence neither proves nor disproves the existence of pneumoconiosis on x-ray, and I still find the evidence to be in equipoise on the issue." *Id.* at 7-8.

In asserting that the administrative law judge erred in finding the x-ray evidence be in equipoise, employer contends that the administrative law judge erred in failing to consider Dr. Wiot's additional radiological qualifications and in failing to consider that

Drs. Wiot and Spitz reviewed serial x-ray films of claimant.[16] Employer's Brief at 35-36. At his deposition, Dr. Wiot testified that he was a C reader prior to the implementation of the B reader[17] program, that he developed the National Institute of Occupational Safety and Health B reader program, that he taught the B reader course since its inception, and that he is currently revising the ILO system and organizing a new B reader course based on the new ILO system. Employer's Exhibit 14 at 6-10. An administrative law judge "is not barred from considering further factors relevant to the level of radiological competence" of an x-ray reader, after considering the B reader and Board-certified status of a physician who has read an x-ray. *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). While the additional qualifications of Dr. Wiot do not mandate that his opinion be accorded greater weight, the administrative law judge should consider the additional qualifications of Dr. Wiot on remand, as they may affect her finding that the x-ray evidence is in equipoise. *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003). Accordingly, we vacate the administrative law judge's Section 727.203(a)(1) (2000) finding and remand this case for the administrative law judge to determine whether the additional qualifications of Dr. Wiot affect her finding that the x-ray evidence is in equipoise.

Employer also contends that the administrative law judge erred in finding that the negative CT scan evidence did not "break her finding of equipoise." Employer's Brief at 37-38; Employer's Reply Brief at 19. Because Section 727.203(a)(1) (2000) states that the interim presumption is established when a chest x-ray, biopsy, or autopsy establishes the existence of pneumoconiosis, the administrative law judge erred in considering the CT scan evidence at this section. 20 C.F.R. §727.203(a)(1) (2000); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 141, 11 BLR 2-1, 2-9 (1987), *reh'g denied*, 484 U.S. 1047 (1988). However, the CT scan evidence is relevant in determining whether employer has established rebuttal pursuant to Section 727.203(b)(4) (2000) and we will address employer's assertion, regarding the administrative law judge's consideration of

[16]There is no basis for employer's assertion that the administrative law judge should have given greater weight to the x-ray interpretations of Drs. Wiot and Spitz because these physicians consistently read, as negative, all five x-rays of claimant taken from 1981 to 2001. The credibility of a physician's x-ray interpretation should be considered on its own, independent of the physician's interpretation of a different x-ray.

[17]A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Occupational Safety and Health. *See* 42 C.F.R. §37.51; *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

the CT scan evidence, at rebuttal. 20 C.F.R. §727.203(b) (2000); *Mullins*, 484 U.S. at 141, 11 BLR at 2-9.

SECTION 727.203(b)(2) (2000) REBUTTAL

Employer asserts that the administrative law judge erred in failing to find Section 727.203(b)(2) (2000) rebuttal. Employer's Brief at 48-52. In discussing rebuttal pursuant to Section 727.203(b)(2) (2000), the administrative law judge first stated that this subsection applies when all the relevant evidence establishes that claimant is able to perform his usual coal mine employment or comparable and gainful work. Decision and Order at 18. The administrative law judge noted next that this case arises within the jurisdiction of the Seventh Circuit[18] and that the Seventh Circuit in *Freeman United Coal Mining Co. v. Foster*, 30 F.3d 834, 18 BLR 2-329 (7th Cir. 1994), *cert. denied*, 514 U.S. 1035 (1995) and *Peabody Coal Co. v. OWCP*, [*Goodloe*], 116 F.3d 207, 21 BLR 2-140 (7th Cir. 1997), has "interpreted the cross reference to section 410.412(a)(1) in subsection (b)(2) as incorporating the requirement that the disability be caused by pneumoconiosis." *Id.* The administrative law judge referenced her analysis at Section 727.203(a)(4) (2000) and stated:

> the medical experts recently expressing opinions in the instant case agree that the Claimant is unable to perform his last coal mine employment from a whole person standpoint, although they disagree as to whether there is any significant pulmonary or respiratory disability or whether any of such disability as exists is attributable to coal mine dust exposure.

Id. The administrative law judge "adopted" Dr. Cohen's opinion, that claimant's respiratory impairment is due to his clinical and legal pneumoconiosis from coal mine employment, over the contrary opinions in the record. *Id.* at 18-19. The administrative law judge stated that she rejects "the assertion that Claimant's disability is entirely due to causes other than pneumoconiosis for the reasons [discussed under Section 727.203(b)(3) (2000) rebuttal]" and concluded that Section 727.203(b)(2) (2000) rebuttal has not been established. *Id.* at 19.

It appears that the administrative law judge blurred the distinction between Section 727.203(b)(2) (2000) rebuttal and Section 727.203(b)(3) (2000) rebuttal. In order to establish rebuttal pursuant to Section 727.203(b)(2) (2000), the party opposing

[18]This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit because claimant's coal mine employment occurred in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

entitlement must establish that the miner is able to perform his usual coal mine employment or comparable and gainful work. *Foster*, 30 F.3d at 837, 18 BLR at 2-337. While the Seventh Circuit in *Foster* held that a party opposing entitlement can establish subsection (b)(2) rebuttal by establishing that claimant is not totally disabled due to a respiratory or pulmonary impairment, the facts in *Foster* are distinguishable from the present case. In *Foster*, it was undisputed that the miner quit work because of a back injury and there was no evidence of pulmonary disability at that time. *Foster*, 30 F.3d at 836, 18 BLR at 2-335. The *Foster* court interpreted the cross reference to Section 410.412(a)(1) in Section 727.203(b)(2) (2000) as incorporating the requirement that the disability be caused by pneumoconiosis to prevent a situation where a claimant who has non-disabling pneumoconiosis, but is totally disabled by another non-respiratory condition, *i.e.* a pre-existing back injury, later receives black lung benefits. *Foster*, 30 F.3d at 838-39, 18 BLR at 2-337. The facts of *Foster* do not exist in the instant case as there is no evidence of a pre-existing non-respiratory disability.

As the administrative law judge stated, there is no medical evidence in this case affirmatively establishing that claimant is able to perform his usual coal mine employment or comparable and gainful work. Drs. Cohen, Houser, Tuteur, Renn, Repsher, and Dahhan all found claimant to be totally disabled from performing his last coal mine employment. Because employer has not put forth any evidence establishing that, notwithstanding any impairments, claimant is able to perform his last coal mine employment, we hold that employer's evidence is insufficient, as a matter of law, to establish rebuttal pursuant to Section 727.203(b)(2) (2000). *Freeman United Coal Mining Co. v. Director, OWCP* [*Forsythe*], 20 F.3d 289, 18 BLR 2-189 (7th Cir. 1994); *Freeman United Coal Mining Co. v. Benefits Review Board* [*Wolfe*], 912 F.2d 164, 14 BLR 2-53 (7th Cir. 1990); *Cole v. East Kentucky Collieries*, 20 BLR 1-50 (1996).

SECTION 727.203(b)(3) (2000) REBUTTAL

Employer asserts that the administrative law judge erred in failing to find Section 727.203(b)(3) (2000) rebuttal established. Employer's Brief at 52-56. Specifically, employer contends that the administrative law judge disregarded the opinions of Drs. Tuteur, Renn, Repsher and Dahhan, who found that claimant is disabled by his age and other medical conditions unrelated to coal mine employment. *Id.* at 54-55; Employer's Reply Brief at 17. Employer also contends that the administrative law judge applied the incorrect standard in finding that employer failed to establish rebuttal pursuant to Section 727.203(b)(3) (2000). Employer's Brief at 52-53, 55-56; Employer's Reply Brief at 13-16.

The record contains the opinions of Drs. Cohen, Houser, Tuteur, Renn, Repsher, and Dahhan that are relevant to Section 727.203(b)(3) (2000) rebuttal.[19] After considering the relevant medical opinion evidence, the administrative law judge determined that this evidence "falls short of ruling out coal mine dust as a contributing factor to the claimant's total disability." Decision and Order at 20. In doing so, the administrative law judge relied on the opinion of Dr. Cohen over the contrary opinions of Drs. Tuteur, Renn, Repsher, and Dahhan.[20] *Id.* Specifically, the administrative law judge found:

> the medical opinion evidence attributing the Claimant's impairment solely to sources other than coal mine employment is insufficient for rebuttal, as the medical opinions list various possible contributing factors without attempting to attribute significance to any one of them and without explaining how these factors played a part in causing Claimant's disability. The reports of Drs. Tuteur, Renn, Repsher, and Dahhan . . . are all deficient in this manner. Despite the volume of paper generated by these physicians, their reports and the opinions articulated at their depositions are either equivocal or essentially conclusory on the matters that are relevant to (b)(3) rebuttal.

Id. The administrative law judge stated that Dr. Cohen "persuasively explained" why there is insufficient medical information to explain how "Employer's experts vaguely attribute Claimant's disabilities" to various other diagnoses. *Id.*

We vacate the administrative law judge's finding of Section 727.203(b)(3) (2000) rebuttal for the following reasons. First, the administrative law judge stated that she found the opinions of Drs. Tuteur, Renn, Repsher, and Dahhan to be "equivocal or essentially conclusory on the matters that are relevant to (b)(3) rebuttal," *Id.*, but the

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[19]Dr. Cohen found claimant to be totally disabled by an occupational lung disease caused by coal dust exposure. Claimant's Exhibit 8. Dr. Houser opined that claimant is disabled from performing his coal mine employment because of his coal workers' pneumoconiosis. Director's Exhibit 47. Drs. Tuteur, Renn, Repsher, and Dahhan ruled out a causal connection between claimant's disability and his coal mine employment. Director's Exhibit 66; Employer's Exhibit 17 at 27; Employer's Exhibit 15 at 23; Employer's Exhibit 16 at 14.

[20]The administrative law judge did not render any findings regarding the credibility of Dr. Houser's opinion.

administrative law judge failed to explain why she found these physicians' opinions to be deficient in this way. Second, the administrative law judge rejected the opinion of Dr. Tuteur, that claimant's ventilatory impairment did not result from his coal mine employment, but again did not offer any rationale as to why she rejected Dr. Tuteur's opinion. *Id.* Accordingly, we vacate the administrative law judge's finding that employer failed to establish rebuttal pursuant to Section 727.203(b)(3) (2000). We instruct the administrative law judge on remand to reconsider the relevant evidence pursuant to Section 727.203(b)(3) (2000), including Dr. Houser's opinion, and to provide a rationale for crediting or discrediting such evidence, as required by the Administrative Procedure Act. *See* 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) and 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589, 1-591 (1984).

Additionally, the Seventh Circuit has held that in order to establish the standard of rebuttal at subsection (b)(3) (2000) employer "'must demonstrate that the claimant's total disability was caused *entirely* by an impairment other than pneumoconiosis.'" *Amax Coal Co. v. Director, OWCP* [*Chubb*], 312 F.3d 882, 890, 22 BLR 2-514, 2-527 (7th Cir. 2002)(quoting *Zeigler Coal Co. v. Kelley*, 112 F.3d 839, 844, 21 BLR 2-92, 2-101 (7th Cir. 1997)(emphasis added). In other words, to establish rebuttal at Section 727.203(b)(3) (2000), employer must rule out pneumoconiosis as a cause of claimant's disability. In reviewing the medical opinion evidence pursuant to Section 727.203(b)(3) (2000), the administrative law judge focused her inquiry on whether employer's physicians credibly opined that claimant was disabled due to conditions other than his pneumoconiosis. However, it is possible for an administrative law judge to find that a physician's opinion implausibly attributes claimant's disability to factors other than pneumoconiosis and still determine that the physician's opinion is credible in ruling out pneumoconiosis as a cause of claimant's disability. In this regard, we instruct the administrative law judge when reconsidering the relevant evidence on remand, to focus on whether employer's physicians rationally ruled out pneumoconiosis as a cause of claimant's respiratory disability pursuant to Section 727.203(b)(3) (2000). *Chubb*, 312 F.3d at 890, 22 BLR at 2-527; *Kelley*, 112 F.3d at 844, 21 BLR at 2-101.

SECTION 727.203(b)(4) (2000) REBUTTAL

Employer contends that the administrative law judge erred in failing to find rebuttal pursuant to Section 727.203(b)(4) (2000). Employer's Brief at 56-58. Employer first asserts that the administrative law judge erred in finding the x-ray evidence to be in "equipoise in discussing Section 727.203(a)(1) invocation" and that this error affects her finding at Section 727.203(b)(4) (2000). *Id.* at 56-57. Pursuant to Section 727.203(b)(4)

(2000),[21] the administrative law judge found that "there can be no rebuttal under subsection (b)(4), relating to evidence establishing that the Claimant did not have pneumoconiosis." Decision and Order at 21. In doing so, the administrative law judge noted that because she "found the x-ray evidence to be in equipoise [and, thus, does not support invocation], it does not support rebuttal." *Id.* Moreover, the administrative law judge found the opinions regarding clinical pneumoconiosis to be premised in part on the x-ray evidence she determined to be in equipoise and, therefore, the administrative law judge also found these opinions to be in equipoise.[22] *Id.* Because we have vacated the administrative law judge's Section 727.203(a)(1) (2000) finding that the x-ray evidence is in equipoise, *see* discussion, *supra* at 10, we also vacate the administrative law judge's findings pursuant to Section 727.203(b)(4) (2000), as they are based on her erroneous Section 727.203(a)(1) (2000) finding.

Additionally, in considering rebuttal at Section 727.203(b)(4) (2000), the administrative law judge failed to consider the negative CT scan evidence, although the administrative law judge did erroneously consider this evidence at Section 727.203(a)(1) (2000).[23] 20 C.F.R. §727.203(b) (2000); *Mullins*, 484 U.S. at 141, 11 BLR at 2-9. Because the administrative law judge failed to consider the negative CT scan evidence at Section 727.203(b)(4) (2000), we instruct the administrative law judge to do so on remand and to provide an explanation for her crediting or discrediting of this evidence. *See Wojtowicz*, 12 BLR at 1-165; *Tenney*, 7 BLR at 1-591.

Lastly, employer asserts that the administrative law judge erred in finding that claimant has legal pneumoconiosis by crediting the opinion of Dr. Cohen over the contrary opinions in the record without providing any analysis to support her findings. Employer's Brief at 57-58. The administrative law judge found the evidence that

[21]To rebut the presumption under Section 727.203(b)(4) (2000), employer has to establish that the miner has neither clinical nor legal pneumoconiosis. *Chastain v. Freeman United Coal Mining Co.*, 919 F.2d 485, 488-89, 14 BLR 2-130, 2-134 (7th Cir. 1990), *pet. for reh'g denied*, 927 F.2d 969 (7th Cir. 1990).

[22]The administrative law judge did not identify which opinions, addressing clinical pneumoconiosis, she found to be based in part on the x-ray evidence.

[23]Pursuant to Section 727.203(a)(1) (2000), the administrative law judge noted that the record contains two negative CT scan interpretations rendered by Drs. Wiot and Spitz and concluded that this additional evidence did not help to prove or disprove the existence of pneumoconiosis on x-ray. Decision and Order at 7. However, the administrative law judge did not explain why she found that the CT scan evidence was unpersuasive in proving or disproving pneumoconiosis.

claimant does not have legal pneumoconiosis to "fall short" of not establishing legal pneumoconiosis "for the same reason [she] found the evidence to fall short of ruling out coal mine dust as a contributing or aggravating factor with respect to Claimant's respiratory impairment." Decision and Order at 21. Therefore, the administrative law judge concluded that employer failed to establish Section 727.203(b)(4) (2000) rebuttal. *Id.* Because we vacate the administrative law judge's Section 727.203(b)(3) (2000) finding, we also instruct the administrative law judge on remand to reconsider her finding regarding legal pneumoconiosis pursuant to Section 727.203(b)(4) (2000) because it is premised on the administrative law judge's flawed finding at Section 727.203(b)(3) (2000).

In the event the administrative law judge denies benefits on remand under 20 C.F.R. Part 727 (2000), she must consider whether claimant has established entitlement at 20 C.F.R. Part 718. *See* 20 C.F.R. §727.203(d) (2000); *Strike v. Director, OWCP*, 817 F.2d 395, 406, 10 BLR 2-45, 2-60 (7th Cir. 1987).

ONSET DATE

Employer contends that the administrative law judge erred in awarding benefits commencing as of January 1980, the filing date of claimant's claim. Employer's Brief at 59-61; Employer's Reply Brief at 18-20. Specifically, employer asserts that because the Seventh Circuit determined in its 1994 decision in this case that the evidence was insufficient to establish total disability due to pneumoconiosis, the date from which benefits commence *must* be at some point subsequent to the Seventh Circuit's decision. Employer's Brief at 59, 61; Employer's Reply Brief at 20-21. Claimant and the Director contend that claimant is not precluded from establishing entitlement to benefits prior to May 11, 1994, the date of the Seventh Circuit's decision. Director's Brief at 1-2; Claimant's Response Brief at 18-19. The Seventh Circuit stated that "[t]he paucity of medical evidence in this case . . . fails to rise to the level of 'substantial evidence' needed to support a finding that the claimant is entitled to black lung benefits." Director's Exhibit 40 at 9. Therefore, the Seventh Circuit remanded this case "so that [claimant] may be given an opportunity to establish the required standard of proof (substantial evidence) of his alleged pneumoconiosis." *Id.* We reject employer's assertion that the Seventh Circuit's decision in this case *requires* that the administrative law judge find the date from which benefits commence to be after the court's decision. As the Director states, "the Seventh Circuit's decision does not establish that [claimant] was not disabled by pneumoconiosis in 1994; it merely shows that the evidence then of record did not prove the fact." Director's Brief at 2. Therefore, it was not inconsistent with the Seventh Circuit's decision for the administrative law judge to have found the date from which benefits commence to be January 1980.

Employer next asserts that the administrative law judge should have found the date from which benefits commence to be September 8, 2000, the date of Dr. Cohen's first report, because the administrative law judge based her finding of total disability on this physician's report. Employer's Brief at 60-61; Employer's Reply Brief at 21-22. Contrary to employer's assertion, the administrative law judge did not base her finding of entitlement solely on Dr. Cohen's report. The administrative law judge found Section 727.203(a)(2) (2000) invocation based on the qualifying pulmonary function studies dated October 24, 1997 and September 8, 2000. Decision and Order at 12. Although the administrative law judge may have based her finding of total disability due to pneumoconiosis on Dr. Cohen's report and the 1997 and 2000 qualifying pulmonary function studies, that does not necessarily mean that the dates of this evidence establish when claimant became totally disabled due to pneumoconiosis. *Merashoff v. Consolidation Coal Co.*, 8 BLR 1-105, 1-109 (1985); *Henning v. Peabody Coal Co.*, 7 BLR 1-753, 1-757 (1985); *Hall v. Consolidation Coal Co.*, 6 BLR 1-1306, 1-1310 (1984). Unless the evidence definitively discusses when claimant became totally disabled, it is merely indicative of a finding that claimant became totally disabled due to pneumoconiosis at some point prior to the date of the evidence. *Chubb*, 312 F.3d at 892 n.9, 22 BLR at 2-531-32 n.9 (citing *Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986)). Accordingly, we reject employer's specific assertion that the administrative law judge should have found the date from which benefits commence to be the date of Dr. Cohen's September 8, 2000 opinion.[24] 20 C.F.R. §725.503(b); *Kelley*, 112 F.3d at 844, 21 BLR at 2-102-3; *Gardner v. Consolidation Coal Co.*, 12 BLR 1-184, 1-186 (1989).

However, in light of our holdings regarding the administrative law judge's weighing of the evidence at Section 727.203(b)(3) and (b)(4) (2000), we instruct the administrative law judge to reconsider the issue regarding the date from which benefits commence, if reached on remand.

DUE PROCESS

Finally, employer asserts that DOL's loss of claimant's file for six years deprived employer of its right to due process and necessitates that liability for this case be transferred to the Trust Fund. Employer's Brief at 62-67. On September 28, 1994, the Board ordered that this case be remanded to the Office of Administrative Law Judges in accordance with the Seventh Circuit's decision. Director's Exhibit 41. Thereafter,

[24]In fact, the date from which benefits would commence would be September 1, 2000, rather than September 8, 2000, because benefits start at the beginning of the month in which the evidence establishes total disability due to pneumoconiosis. 20 C.F.R. §725.503(b).

claimant's official file was missing until February 11, 2000, when it reached the Office of Administrative Law Judges. In response to Judge Burke's Order of Remand to the district director for further evidentiary development, employer filed a Motion for Reconsideration. Director's Exhibit 46. In its Motion for Reconsideration, employer asserted that it should be dismissed as the responsible operator and liability for the payment of benefits should be transferred to the Trust Fund because it was denied due process caused by the delay in adjudicating this claim. *Id.* On May 16, 2000, Judge Burke issued an order granting employer's Motion for Reconsideration but denying the relief requested. Director's Exhibit 53. In his Order, Judge Burke stated that the circuit court cases, *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 22 BLR 2-25 (6th Cir. 2000), *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 21 BLR 2-545 (4th Cir. 1999), and *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 21 BLR 2-302 (4th Cir. 1998), cited by employer in support of its Motion for Reconsideration can be distinguished from the instant case. Judge Burke stated that in *Holdman*, *Borda*, and *Lockhart*:

> the circuit courts dismissed potentially responsible operators on the grounds that the [DOL's] mishandling of the claims resulted in a failure to timely notify the operators of their potential liability, thus foreclosing the possibility that the employers could mount a meaningful defense. Here, Employer was timely notified of its potential liability and has been actively litigating its position throughout the multiple appeals filed.

Director's Exhibit 53. Accordingly, Judge Burke concluded that employer's due process rights have not been denied. *Id.* In its Post Hearing Brief, employer again asserted that it should be dismissed and liability for this case should transfer to the Trust Fund. Employer's Post Hearing Brief at 45-46. The administrative law judge did not respond to employer's assertion regarding its dismissal in her Decision and Order.[25]

Employer specifically contends that Judge Burke erred in distinguishing *Holdman* from the present case because in both cases employer was timely notified of its liability.

[25]Claimant asserts that employer waived its right to address the due process issue on appeal because employer failed to raise this issue at the hearing and only "superficially" discusses the issue in its Post Hearing Brief. Claimant's Response Brief at 20. Claimant's contention has no validity because employer raised this issue before Administrative Law Judge Thomas M. Burke and discussed this issue, in depth, before the administrative law judge in its Post Hearing Brief, prior to raising it on appeal before the Board. Employer's Post Hearing Brief at 45-46; *see Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-6 (1995).

Employer's Brief at 63. Employer also contends that *Holdman* is noteworthy because in that case the Sixth Circuit did not require employer to show "actual prejudice" as a result of the agency's mishandling of a claim. *Id.* at 64-65. The Director contends that, based on the facts of the instant case, transfer of liability to the Trust Fund is not warranted. Director's Brief at 2-4. Specifically, the Director asserts that no due process violation exists in this case where "[n]o critical evidence has been lost, [claimant] is alive, and employer has availed itself of the opportunity to have [claimant] examined on numerous occasions." *Id.* at 3. The Director further asserts that in the instant case, "[t]he Director has not failed to respond to any orders issued by any tribunal, and it would be inappropriate to burden the Trust Fund with liability for this claim merely due to the passage of time." *Id.* We agree with the Director.

In *Holdman*, the Director lost the record file and ignored repeated attempts by the Board and the administrative law judge to reconstruct the record and resolve the issue. The loss of the record file resulted in employer not having access to certain evidence. Accordingly, the United States Court of Appeals for the Sixth Circuit held that liability should be transferred to the Trust Fund because, as the Director states, "it would be a violation of fundamental fairness to require the operator to defend a claim where the Director had lost the transcript and medical evidence . . . and failed for fourteen years to resolve the issue." Director's Brief at 2. In the instant case, employer was timely notified of the claim, developed evidence, and participated in every stage of adjudication. No critical medical evidence was lost, but the record file was misplaced for six years. Employer is alleging that the six-year delay in processing this claim caused it prejudice and violated its due process rights. However, employer has not shown that it was denied due process.[26]

Employer's contention that its due process concerns would have been remedied had the administrative law judge applied the regulations at 20 C.F.R. Part 718, which factors in the age of the miner, is unpersuasive. Employer was aware when claimant filed his claim in 1980 that the regulations at 20 C.F.R. Part 727 (2000) were applicable to this case. Moreover, employer's assertion, that it was prejudiced by the six-year delay

[26]Employer, citing *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 22 BLR 2-25 (6th Cir. 2000), asserts that "there is no requirement that actual prejudice be shown to prove a due process violation." Employer's Reply Brief at 24. However, as the Director asserts, employer fails to acknowledge *Amax Coal Co. v. Director, OWCP* [*Chubb*], 312 F.3d 882, 22 BLR 2-514 (7th Cir. 2002), a case in which the Seventh Circuit, in whose jurisdiction this case arises, has recently addressed this issue. In *Chubb*, the court denied the employer's claim that a sixteen-year delay in the proceedings deprived it of due process. In so holding, the Seventh Circuit court *detected no prejudice to the employer*, stating that employer received notice of, and participated in, all proceedings dealing with the claim. *Chubb*, 312 F.3d at 888, 22 BLR at 2-524-25.

because of the resulting deterioration in the claimant's lung capacity due to his increase in age, is not a legitimate basis for releasing it from liability. As the Director states, "[e]mployer has had full opportunity to argue that the miner's age cause[d] his disability. Should [employer prove] the validity of the argument, then [claimant] is not entitled to benefits." Director's Brief at 3-4 n.5. Under the facts of this case, we reject employer's contentions and decline to transfer liability to the Trust Fund. *Chubb*, 312 F.3d at 888, 22 BLR at 2-524-25.

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

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge