

BRB No. 08-0572 BLA

C.T.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MARTIN COUNTY COAL	)	DATE ISSUED: 04/28/2009
CORPORATION	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Moak & Nunnery, P.S.C.), Prestonsburg, Kentucky, for claimant.

Waseem A. Karim (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (2005-BLA-05665) of Administrative Law Judge Robert D. Kaplan denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case is before the Board for the second time. In the original Decision and Order, Administrative Law Judge Paul H. Teitler accepted the parties' stipulation to twenty-seven years of coal mine employment and considered the claim, filed on March 8, 2004, pursuant to 20 C.F.R. Part 718. Addressing

the merits of entitlement, Judge Teitler determined that the medical evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and that the presumption that claimant's pneumoconiosis arose out of coal mine employment, set forth in 20 C.F.R. §718.203(b), was invoked and not rebutted. With respect to the issue of total disability, Judge Teitler found that the x-ray and CT scan evidence was sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, Judge Teitler awarded benefits.

Pursuant to employer's appeal of Judge Teitler's decision, the Board vacated the award of benefits and remanded the case for further consideration of the medical evidence pursuant to Sections 718.202(a), 718.204(b) and 718.304. *C.T. v. Martin County Coal Corp.*, BRB No. 06-0861 BLA (Aug. 22, 2007)(unpub.). Initially, the Board vacated Judge Teitler's crediting of the positive x-ray readings by Drs. West, Jarboe and Wiot, as well as Dr. Jarboe's medical report, based on their party affiliations, holding that Judge Teitler did not provide a valid rationale for according determinative weight to these opinions on that basis. *C.T.*, slip op. at 5-6. In addition, the Board vacated Judge Teitler's finding that Dr. Jurich's opinion, diagnosing pneumoconiosis, was entitled to additional weight based on his status as claimant's treating physician. *Id.* Consequently, because Judge Teitler provided improper bases for according greater weight to the evidence provided by Drs. West, Jarboe, Wiot and Jurich, the Board vacated his findings under Sections 718.202(a)(1), (4) and 718.304, and remanded the case for reconsideration of the evidence pursuant to Sections 718.202(a), 718.203, 718.204 and 718.304. *C.T.*, slip op. at 7.

On remand, Administrative Law Judge Robert D. Kaplan (the administrative law judge)<sup>1</sup> set forth the Board's remand instructions and found the x-ray, CT scan and medical opinion evidence insufficient to establish the existence of simple pneumoconiosis pursuant to Section 718.202(a)(1) and (4). In addition, the administrative law judge found this evidence insufficient to establish the existence of complicated pneumoconiosis and, thus, insufficient to establish invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304. The administrative law judge further found that the medical evidence failed to establish total disability pursuant to Section 718.204(b)(2)(i)-(iv). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish entitlement to benefits, arguing that the administrative

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<sup>1</sup> Prior to the decision on remand, Administrative Law Judge Paul H. Teitler died. Decision and Order on Remand at 2. The case was therefore transferred to Administrative Law Judge Robert D. Kaplan (the administrative law judge).

law judge erred in finding the x-ray, CT scan and medical opinion evidence insufficient to establish complicated pneumoconiosis pursuant to Section 718.304. In addition, claimant contends that the administrative law judge erred in failing to accord determinative weight to the opinion of claimant's treating physician, Dr. Jurich. Claimant further argues that the administrative law judge erred in failing to apply the "true doubt rule" to the evidence in this case. In response, employer urges affirmance of the administrative law judge's denial of benefits, as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not submit a substantive response unless requested to do so by the Board.<sup>2</sup>

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.<sup>3</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent*, 11 BLR at 1-27.

In challenging the administrative law judge's denial of benefits, claimant contends that the administrative law judge erred in finding the x-ray and CT scan evidence insufficient to establish complicated pneumoconiosis. Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish complicated pneumoconiosis, as all of the qualified physicians found that the x-ray and CT scan evidence showed the presence of "disease" in claimant's lungs. Claimant's Brief at 5. In addition, claimant contends that the administrative law judge erred in

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<sup>2</sup> The parties do not challenge the administrative law judge's findings that the evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) and that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). These findings are therefore affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

failing to review all of the relevant medical evidence and history supporting the finding of complicated pneumoconiosis. Specifically, claimant contends that the administrative law judge gave “unlawful and inequitable weight” to the speculative evidence rather than “focusing on the clear record before him.” Claimant’s Brief at 4. Claimant also contends that application of the true doubt rule is appropriate where the evidence is in equipoise, as in this case. There is no merit to these contentions.

The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption. The administrative law judge must first determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b), and (c) before determining whether invocation of the irrebuttable presumption pursuant to Section 718.304 has been established. *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(*en banc*); see *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993). Moreover, contrary to claimant’s contention, merely because the evidence is consistent in showing the presence of ‘disease’ in claimant’s lungs, it does not presumptively establish that the condition is complicated pneumoconiosis, but rather, claimant is required to establish the presence of complicated pneumoconiosis by a preponderance of the credible evidence. *Id.*

At the outset, it is noted that the administrative law judge did not specifically consider the relevant evidence under the individual subsections of Section 718.304; however, he weighed all of the evidence relevant to the issue of complicated pneumoconiosis and found that the x-ray evidence, CT scan evidence and medical opinion evidence is insufficient to establish complicated pneumoconiosis.<sup>4</sup> In particular, the administrative law judge considered the thirteen readings of four x-ray films dated April 14, 2004, November 10, 2004, January 27, 2005 and July 11, 2005.<sup>5</sup> Weighing this

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<sup>4</sup> The record is devoid of biopsy evidence; therefore, claimant cannot establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).

<sup>5</sup> The April 14, 2004 x-ray was read as positive for Category A large opacities by Dr. Wiot, a dually-qualified B reader and Board-certified radiologist, but read as negative for complicated pneumoconiosis by Drs. Scott, West and Wheeler, each of whom are also dually-qualified radiologists. Director’s Exhibit 1; Claimant’s Exhibit 6; Employer’s Exhibits 4, 12. The November 10, 2004 x-ray was read as positive for Category A large opacities by Dr. Halbert, a dually-qualified radiologist, whereas Dr. Wheeler and Dr. Repsher, a B reader, read this film as negative for complicated pneumoconiosis. Claimant’s Exhibit 8; Employer’s Exhibits 1, 15. Dr. Jarboe, a B reader, and Dr. Kendall, whose qualifications are not in the record, read the January 27, 2005 x-ray as positive for complicated pneumoconiosis, but the film was read as negative for

evidence, the administrative law judge found the April 14, 2004 x-ray to be negative for complicated pneumoconiosis, finding that Dr. Wiot's positive reading was outweighed by the readings of equally qualified readers, Drs. Scott, West and Wheeler, each of whom found no large opacities compatible with complicated pneumoconiosis. Decision and Order on Remand at 18. Similarly, the administrative law judge found that Dr. Halbert's positive reading of the November 10, 2004 x-ray was outweighed by the negative findings by Dr. Wheeler, as supported by the negative reading by Dr. Repsher. *Id.* The administrative law judge further found the January 27, 2005 x-ray to be negative for complicated pneumoconiosis, based on his determination that the two positive readings were outweighed by the negative interpretation of this film by Dr. Wheeler, a dually-qualified radiologist, and Dr. Repsher, a B reader. *Id.* Based on his weighing of the individual x-ray films, the administrative law judge found that the weight of the x-ray evidence does not support a finding of complicated pneumoconiosis. Decision and Order on Remand at 19.

Contrary to claimant's contention that the administrative law judge did not consider all of the evidence from physicians who are B readers and Board-certified radiologists, the administrative law judge considered all of the relevant x-ray evidence in determining that the preponderance of the x-ray evidence is insufficient to establish the existence of complicated pneumoconiosis. Specifically, the administrative law judge considered both the quantity and the quality of the x-ray readings, according greater weight to the readings by physicians with superior credentials. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order on Remand at 18-19. Because the administrative law judge's findings are supported by substantial evidence, we affirm his finding that the preponderance of the x-ray evidence of record is insufficient to establish complicated pneumoconiosis. *See* 20 C.F.R. §718.304(a); *Melnick*, 16 BLR at 1-37.

Furthermore, we affirm the administrative law judge's finding that the CT scan and medical opinion evidence is insufficient to establish complicated pneumoconiosis and, thus, is insufficient to establish invocation of the irrebuttable presumption pursuant to Section 718.304(c). In weighing the CT scan evidence, the administrative law judge considered the individual CT scans for the presence or absence of complicated

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complicated pneumoconiosis by Dr. Wheeler and Dr. Repsher. Claimant's Exhibits 1, 2; Employer's Exhibits 3, 15. The July 11, 2005 x-ray film was interpreted as positive for simple pneumoconiosis by Dr. Baker, a B reader, but negative for large opacities as he marked Category 0, large opacities. Employer's Exhibit 11.

pneumoconiosis. Decision and Order on Remand at 22-23. The administrative law judge found that the May 24, 2002 CT scan was negative for complicated pneumoconiosis, based on his determination that Dr. Wiot's finding of Category A large opacities was outweighed by the interpretations of Dr. Scott, as supported by the finding of Dr. Sakow, that the CT scan is negative for pneumoconiosis.<sup>6</sup> *Id.* at 23; Director's Exhibit 33; Claimant's Exhibit 7; Employer's Exhibit 2. Similarly, the administrative law judge found the November 10, 2004 CT scan to be negative for complicated pneumoconiosis, based on his finding that Dr. Halbert's positive reading of complicated pneumoconiosis was outweighed by the negative reading of Dr. Scott, as supported by Dr. Ghio's negative interpretation.<sup>7</sup> Decision and Order on Remand at 23; Claimant's Exhibit 8; Employer's Exhibits 2, 8. With regard to the January 27, 2005 CT scan, the administrative law judge found that the two positive readings of this scan for complicated pneumoconiosis, by Dr. Jarboe, a B reader, and Dr. Kendall, whose credentials are not in the record, were outweighed by the negative reading by Dr. Scott, who is a dually-qualified radiologist.

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<sup>6</sup> Dr. Wiot, a dually-qualified radiologist, read the May 24, 2002 CT scan as showing large opacities present bilaterally and, thus, found that the CT scan was compatible with complicated pneumoconiosis. Claimant's Exhibit 7. Dr. Scott, also a dually-qualified radiologist, found linear scarring in both apices and a few small nodules with small calcified granulomata and opined that the changes were probably due to tuberculosis of unknown activity. Employer's Exhibit 2. Dr. Scott further stated that he saw no evidence of silicosis or coal workers' pneumoconiosis. *Id.* Dr. Sakow, who provided the original interpretation of this CT scan, opined that the lungs were mildly hyperinflated with no evidence of any acute infiltrates, effusions or suspicious pulmonary or parenchymal nodules. Director's Exhibit 33. Dr. Sakow also noted the presence of several calcified granulomas. *Id.*

<sup>7</sup> Dr. Halbert, a dually-qualified radiologist, found confluent masses or infiltrates in both apices, and opined that the findings are consistent with those seen in complicated pneumoconiosis with size A large opacities. Claimant's Exhibit 8. Dr. Scott noted linear and nodular scarring in both upper lungs extending to the pleura and opined that it was probably due to healed tuberculosis. Employer's Exhibit 2. In addition, Dr. Scott noted a few small calcified granulomata in the upper lungs, also compatible with healed tuberculosis. *Id.* Dr. Ghio, a B reader, opined that the findings seen on the CT scan are consistent with granulomatous disease and that they are not consistent with pneumoconiosis because there are no rounded or irregular opacities to suggest pneumoconiosis. Employer's Exhibit 8. Dr. Wheeler, a dually-qualified radiologist, opined that the pattern of disease seen on the CT scan is compatible with granulomatous disease, with tuberculosis more likely than histoplasmosis. Employer's Exhibit 10. Dr. Wheeler also noted the presence of a few small nodules in the upper lobes which could be coal workers' pneumoconiosis, but the pattern is not typical of pneumoconiosis. *Id.*

The administrative law judge noted that Dr. Scott's negative reading was supported by the two negative readings by Drs. Ghio and Repsher, both of whom are B readers.<sup>8</sup> Decision and Order on Remand at 23; Claimant's Exhibits 1, 2; Employer's Exhibits 3, 5, 8. Consequently, the administrative law judge found that the preponderance of the CT scan evidence does not establish the presence of complicated pneumoconiosis. Decision and Order on Remand at 23.

Contrary to claimant's contentions, the administrative law judge considered all of the relevant CT scan evidence, and found that the weight of this evidence was insufficient to establish the presence of complicated pneumoconiosis. In weighing the CT scan evidence, the administrative law judge reasonably considered the individual CT scans, as well as the professional credentials of the physicians providing the interpretations, and determined that the weight of this evidence was negative for the presence of complicated pneumoconiosis. *Melnick*, 16 BLR at 1-34. Moreover, contrary to claimant's contention, claimant must establish each of the elements of entitlement by a preponderance of the evidence. It is not sufficient for claimant to submit some evidence supportive of his burden, but rather, he must submit evidence sufficient to carry his burden of proof. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994). Herein, the administrative law judge reasonably exercised his discretion in finding that the preponderance of the CT scan evidence was negative for the presence of complicated pneumoconiosis. 20 C.F.R. §718.304(c); *Melnick*, 16 BLR at 1-34; *see Ondecko*, 512 U.S. at 272-76, 18 BLR at 2A-6-9.

With regard to the medical opinion evidence, the administrative law judge considered the medical reports of Drs. Ammisetty, Jarboe, Jurich, Repsher, Ghio, Baker and Fino, of which only Drs. Jarboe, Repsher and Fino discussed the evidence in terms of complicated pneumoconiosis. Decision and Order on Remand at 20-22. Weighing the

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<sup>8</sup> Dr. Jarboe and Dr. Kendall both noted the presence of large opacities bilaterally, as well as small nodules in the upper lung zones, and opined that the findings are consistent with complicated pneumoconiosis. Claimant's Exhibits 1, 2. Dr. Scott noted bilateral, predominantly linear scarring in the upper lungs and apices, and opined that they were probably due to healed tuberculosis. Employer's Exhibit 5. Dr. Repsher, a B reader, noted classical findings of biapical, probably inactive, pulmonary tuberculosis and further opined that there was no evidence of coal workers' pneumoconiosis. Employer's Exhibit 3. Dr. Ghio also opined that the findings are consistent with granulomatous disease and are not consistent with coal workers' pneumoconiosis. Employer's Exhibit 8. Dr. Wheeler, opined that the changes are consistent with granulomatous disease, more likely tuberculosis, rather than histoplasmosis. Employer's Exhibit 5. Dr. Wheeler noted a few tiny nodules which could be coal workers' pneumoconiosis, but opined that tuberculosis better explained the changes due to the location of the disease. *Id.*

relevant medical opinions, the administrative law judge found that Dr. Jarboe's opinion, which included a diagnosis of Category A large opacities, was not well-reasoned or well-documented because Dr. Jarboe based his positive diagnosis of complicated pneumoconiosis on his interpretation of the January 27, 2005 x-ray film, which is contrary to the administrative law judge's finding regarding that x-ray film. Decision and Order on Remand at 20; Claimant's Exhibit 1. In addition, the administrative law judge found that Dr. Jarboe's reliance on his positive CT scan interpretation was compromised because the administrative law judge found the CT scan evidence insufficient to support a finding of complicated pneumoconiosis. *Id.* Because Dr. Jarboe did not provide any other support for his diagnosis of complicated pneumoconiosis, the administrative law judge found Dr. Jarboe's opinion that claimant suffered from complicated pneumoconiosis entitled to no weight. *Id.*

Similarly, the administrative law judge found that Dr. Fino's opinion was neither well-reasoned nor well-documented. In diagnosing the presence of simple coal workers' pneumoconiosis, Dr. Fino noted that the record contains three positive x-ray interpretations and three negative x-ray interpretations, as well as two positive CT scan interpretations for pneumoconiosis and one negative CT scan interpretation, which diagnosed moderately advanced inactive pulmonary tuberculosis. Employer's Exhibit 13. Thus, while opining that claimant has simple pneumoconiosis, Dr. Fino also stated that there was disagreement amongst the readers regarding the presence or absence of complicated pneumoconiosis. *Id.* However, Dr. Fino concluded that claimant's normal lung functions argue against a diagnosis of complicated pneumoconiosis. *Id.* The administrative law judge therefore found that because he was unable to determine whether Dr. Fino based his opinion regarding the existence of simple pneumoconiosis on the x-ray evidence, which did not support a finding of pneumoconiosis, he accorded Dr. Fino's opinion, as a whole, no weight. *Id.*

With regard to Dr. Repsher's opinion that claimant was not suffering from complicated pneumoconiosis but, rather, that the findings on x-ray and CT scan were due to tuberculosis, the administrative law judge found this opinion was well-reasoned and well-documented, as it was based on Dr. Repsher's physical examination of claimant, medical history and objective testing, as well as the review of other medical reports of record. Decision and Order on Remand at 21; Employer's Exhibits 1, 14, 16. The administrative law judge found that Dr. Repsher's opinion that the changes seen on x-ray and CT scans were due to tuberculosis, rather than pneumoconiosis, was supported by the opinions of Drs. Wheeler and Scott. Decision and Order on Remand at 21, 22. The administrative law judge, therefore, found that Dr. Repsher's opinion is entitled to substantial weight, as it is supported by the evidence of record. *Id.*

Contrary to claimant's contention that the administrative law judge erred in finding the evidence insufficient to establish the presence of complicated pneumoconiosis



because the medical opinion evidence supported the positive CT scan evidence, the administrative law judge reasonably found that none of the credible medical opinions of record are supportive of a finding of complicated pneumoconiosis. The administrative law judge reasonably found that the opinion of Dr. Repsher, that claimant does not have complicated pneumoconiosis, but rather that the abnormalities seen on his x-ray and CT scan are due to tuberculosis, was well-reasoned and well-documented because it was supported by its underlying documentation and the other evidence of record. *See Crockett Collieries, Inc., v. Director, OWCP [Barrett]*, 478 F.3d 350, 355, 23 BLR 2-472, 2-482 (6th Cir. 2007); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). Because the administrative law judge considered the medical opinion evidence relevant to claimant's burden at Section 718.304(c), and rationally found that it is insufficient to establish complicated pneumoconiosis, we affirm his finding that the claimant has not established the existence of complicated pneumoconiosis by medical opinion evidence.<sup>9</sup> Moreover, we affirm the administrative law judge's finding that the weight of the evidence as a whole is insufficient to establish the presence of complicated pneumoconiosis. We, therefore, affirm his finding that claimant did not establish that he suffers from complicated pneumoconiosis pursuant to Section 718.304(a)-(c).<sup>10</sup> *Melnick*, 16 BLR at 1-34.

In addition, we affirm the administrative law judge's finding that the medical evidence is insufficient to establish that claimant is totally disabled pursuant to Section 718.204(b)(2). With regard to the administrative law judge's finding that the medical

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<sup>9</sup> We need not address claimant's contention that the administrative law judge erred in failing to accord greater weight to the opinion of Dr. Jurich, claimant's treating physician, pursuant to 20 C.F.R. §718.104(d), because Dr. Jurich's opinion did not address the issue of complicated pneumoconiosis.

<sup>10</sup> Contrary to claimant's contention, the administrative law judge was not required to apply the "true doubt" rule in assessing the evidence and determining whether claimant was entitled to benefits. *See* Claimant's Brief at 20. The United States Supreme Court has held that the application of the true doubt rule violates Section 7(c) of 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) and 30 U.S.C. §932(a), as it relieves claimants of their burden of proof in establishing entitlement to benefits. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994). Accordingly, contrary to claimant's contention, the administrative law judge must determine the credibility of the evidence of record and the weight to be accorded the evidence when deciding whether a party has met its burden of proof. *See Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *see also Ondecko*, 512 U.S. at 281, 18 BLR at 2A-12.

evidence is insufficient to establish total disability, we note that claimant does not sufficiently challenge the administrative law judge's determination that the pulmonary function study, blood gas study and medical opinion evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(i), (ii) and (iv). Because claimant alleges no specific error in regard to that finding, and the Board is not empowered to engage in a *de novo* review of the evidence of record, we affirm the administrative law judge's finding that the weight of the medical evidence, as a whole, is insufficient to establish total respiratory disability pursuant to Section 718.204(b)(2). See 20 C.F.R. §§802.211, 802.301; *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

Since claimant has not established total respiratory disability pursuant to Section 718.204(b), or the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, an award of benefits under Part 718 is precluded. *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. Moreover, in light of our affirmance of the administrative law judge's finding that total respiratory disability was not established, an essential element of entitlement, we need not address claimant's contentions regarding the administrative law judge's findings under Section 718.202(a). *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge