U.S. Department of Labor

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

BRB No. 15-0525 BLA

BRETT W. DUNCAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BLUESTONE COAL CORPORATION	)	
	)	
and	)	
	)	
CHARTIS CASUALTY COMPANY	)	DATE ISSUED: 08/25/2016
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Mary Jane Brown (Bailey, Javins & Carter LC), Summersville, West Virginia, for claimant.

Sarah Y. M. Himmel (Two Rivers Law Group, PC), Christiansburg, Virginia, for employer/carrier.

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting 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: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2013-BLA-05321) of Administrative Law Judge Scott R. Morris, rendered on a miner's claim filed on March 2, 2012, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with at least twenty-three years of coal mine employment,[1] including at least fifteen years of underground or substantially similar coal mine employment,[2] pursuant to the parties' stipulation. The administrative law judge found that the evidence did not establish the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304. Consequently, the administrative law judge found that claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis provided at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). The administrative law judge further found that, although claimant established the existence of simple clinical pneumoconiosis, pursuant to 20 C.F.R. §718.202(a), he did not establish that he has a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in his analysis of the evidence when he found that it did not establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Employer/carrier (employer) responds, urging the Board to affirm the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a response, agreeing with claimant that

[1] Claimant's most recent coal mine employment was in West Virginia. Hearing Transcript at 52; Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

the administrative law judge erred in his analysis of the evidence in determining that claimant did not establish complicated pneumoconiosis.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Evidentiary Issues

Claimant initially argues that the administrative law judge abused his discretion in declining to consider a medical report submitted by claimant, on the grounds that the physician's report exceeded the evidentiary limitations set forth at 20 C.F.R. §725.414. We disagree.

Section 725.414, in conjunction with 20 C.F.R. §725.456(b)(1), sets limits on the amount of specific types of medical evidence that the parties can submit into the record. 20 C.F.R. §§725.414; 725.456(b)(1). Medical evidence that exceeds those limitations "shall not be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1). Relevant to the issue claimant raises, 20 C.F.R. §725.414 allowed claimant to "submit, in support of [his] affirmative case . . . no more than two medical

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant has twenty-three years of coal mine employment, at least fifteen years of which are qualifying for purposes of Section 411(c)(4); that claimant established the existence of simple clinical pneumoconiosis, pursuant to 20 C.F.R. §718.202(a); and that claimant failed to establish that he has a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because claimant did not establish that he is totally disabled, he cannot invoke the rebuttable presumption of total disability due to pneumoconiosis provided at Section 411(c)(4).

reports." 20 C.F.R. §725.414(a)(2)(i). The record reflects that claimant submitted and designated two medical reports, one from Dr. Porterfield, and the other from three physicians of the West Virginia Occupational Pneumoconiosis Board (OPB). Claimant's Evidence Summary Form at 5-6, June 4, 2014. Additionally, claimant submitted a third medical report from Dr. Rasmussen, which claimant designated as "other medical evidence," pursuant to 20 C.F.R. §718.107, in rebuttal of Dr. Dahhan's medical report, submitted by employer. *Id*. at 8.

Claimant contends that the administrative law judge erred in excluding claimant's third medical report from Dr. Rasmussen after it was admitted into the record without objection and the record was closed. Claimant's Brief at 10-11. Contrary to claimant's contention, the evidentiary limitations are mandatory and may not be waived. *Smith v. Martin Cnty. Coal Co.*, 23 BLR 1-69, 1-74 (2004). The administrative law judge explained that, despite claimant's evidentiary designations, Dr. Rasmussen's medical report did not constitute "other medical evidence" under 20 C.F.R. §718.107,[4] and the evidentiary limitation rules do not provide for the rebuttal of an opposing party's medical opinion.[5] Decision and Order at 5 n.10. Because claimant submitted two medical reports, and did not argue that good cause existed to exceed the evidentiary limitations

[4] Section 718.107 provides for the admission and consideration of the "results of any medically acceptable test or procedure . . . not addressed" in the regulations, 20 C.F.R. §718.107(a), provided that the party submitting the test or procedure establishes that it is medically acceptable and relevant. 20 C.F.R. §718.107(b).

[5] The evidentiary rules provide for the rebuttal of specific types of objective tests underlying a medical report; they do not provide for the rebuttal of medical reports themselves. 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). Instead, a separate provision allows a party to respond to the other party's medical opinion evidence by having one or both of the doctors who prepared its affirmative medical reports review and address the opposing side's opinion evidence in a supplemental report. *See* 20 C.F.R. §725.414(a)(1)(providing that "[a] medical report may be prepared by a physician who examined the miner and/or reviewed the available admissible evidence"); *C.L.H.* [*Hill*] *v. Arch on the Green, Inc.*, BRB No. 07-0133 BLA, slip op. at 4 (Oct. 31, 2007)(unpub.)(holding that supplemental reports based on review of admissible evidence do not exceed the two-report limitation); *see also* 81 Fed. Reg. 24464, 24480 (Apr. 26, 2016), to be codified at 20 C.F.R. §725.414(a)(1)(making explicit that a supplemental report "prepared by the same physician must be considered part of the physician's original medical report").

with a third medical report from a different physician, the administrative law judge did not abuse his discretion in declining to consider Dr. Rasmussen's medical report.[6]

Complicated Pneumoconiosis

Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304.

The United States Court of Appeals for the Fourth Circuit has held that, "[b]ecause prong (A) sets out an entirely objective scientific standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition that is diagnosed by biopsy or autopsy under prong (B) or by other means under prong (C) would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). In determining whether claimant has established invocation of the irrebuttable presumption, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc). In this case, the administrative law judge considered analog x-ray evidence, pursuant to 20 C.F.R. §718.304(a), and medical

[6] Moreover, the administrative law judge discredited Dr. Dahhan's opinion that claimant does not have complicated pneumoconiosis because he does not have a restrictive ventilatory impairment. Decision and Order at 20. That reasoning was the aspect of Dr. Dahhan's opinion that claimant stated he sought to rebut with Dr. Rasmussen's report. *See* Claimant's Evidence Summary at 8. Since the administrative law judge accorded "no weight" to Dr. Dahhan's opinion regarding complicated pneumoconiosis, Decision and Order at 20, claimant has not explained how he was prejudiced by the exclusion of Dr. Rasmussen's report. *See Sea "B" Mining Co. v. Addison*, F.3d , No. 14-2324, 2016 WL 4056396 at *6 (4th Cir. July 29, 2016).

opinion evidence, CT-scan evidence, digital x-ray evidence,[7] and medical treatment notes, pursuant to 20 C.F.R. §718.304(c).[8]

Pursuant to 20 C.F.R. §718.304(a), the administrative law judge considered five readings of an analog x-ray taken on March 14, 2012 and two readings of an analog x-ray taken on June 7, 2012. Drs. Ahmed and Groten, both of whom are dually qualified as B readers and Board-certified radiologists, read the March 14, 2012 x-ray as positive for Category A large opacities. Director's Exhibit 24. Drs. Wheeler and Scott, who are also dually qualified, read the same x-ray as negative for complicated pneumoconiosis, as did Dr. Forehand, a B reader. Employer's Exhibits 3, 11; Director's Exhibit 13. Dr. Groten read the June 7, 2012 x-ray as positive for Category A large opacities, while Dr. Adcock, who is also dually qualified, read the same x-ray as negative for complicated pneumoconiosis. Claimant's Exhibit 2; Employer's Exhibit 2.

The administrative law judge first weighed the interpretations of the March 14, 2012 x-ray and determined that Dr. Wheeler's negative interpretation merited "little weight," finding it "equivocal, speculative and . . . unsupported by the weight of the evidence of record."[9] Decision and Order at 12-13. The administrative law judge did not discredit any other physician's interpretation of the March 14, 2012 x-ray, although he appeared to give more weight to the interpretations of the dually-qualified physicians, and less weight to Dr. Forehand's interpretation because he is qualified as a B reader

[7] The hearing in this case was held on April 3, 2014. On April 17, 2014, the Department of Labor published revised regulations that addressed quality standards for, and the consideration of, digital x-rays. 79 Fed. Reg. 21,606 (Apr. 17, 2014). Those revisions took effect on May 19, 2014. On August 4, 2014, the administrative law judge issued an order stating that, because he heard the case and accepted the evidence before May 19, 2014, he would consider the digital x-ray evidence in this claim as other medical evidence under 20 C.F.R. §718.107, rather than under the new quality standards. On appeal, no party challenges this aspect of the administrative law judge's decision.

[8] The record contains no biopsy evidence, pursuant to 20 C.F.R. §718.304(b).

[9] Specifically, the administrative law judge discredited Dr. Wheeler's reading as equivocal based on his use of question marks when he indicated that the x-ray contains pleural abnormalities consistent with pneumoconiosis. Decision and Order at 13-14; Employer's Exhibit 11. The administrative law judge also discounted Dr. Wheeler's reading because he was the only physician to conclude that claimant does not have at least simple pneumoconiosis, and because, in the administrative law judge's view, Dr. Wheeler relied on "generalities unsupported by the record." *Id*. at 13-14 & nn. 22-23.

only. Decision and Order at 13. The administrative law judge concluded that, because "three out of the four dually[-]qualified radiologists" interpreted the March 14, 2012 x-ray as negative for complicated pneumoconiosis, the preponderance of the evidence did not establish that the x-ray was positive for large opacities. *Id*.

We agree with claimant and the Director that the administrative law judge erred in weighing the readings of the March 14, 2012 x-ray. They accurately note that only two, not three, dually-qualified readers (Drs. Wheeler and Scott) concluded that the x-ray did not show complicated pneumoconiosis. Employer's Exhibits 3, 11. Drs. Ahmed and Groten, the other two dually-qualified readers, both observed Category A large opacities and diagnosed complicated pneumoconiosis. Director's Exhibit 24.

Moreover, as claimant and the Director point out, the administrative law judge did not discredit the positive interpretations of Drs. Ahmed and Groten, or the negative interpretation of Dr. Scott, but wholly discredited Dr. Wheeler's negative interpretation, finding that it "deserves little weight" and that "the great weight of the evidence lies contrary" to it. Decision and Order at 13-14; Claimant's Brief at 14-15; Director's Brief at 2. In light of that determination, and the administrative law judge's stated reliance on the readings of the dually-qualified physicians, the administrative law judge's conclusion, that the preponderance of the March 14, 2012 x-ray readings did not establish that large opacities of pneumoconiosis were present on the x-ray, is inconsistent with the weight that he accorded to the physicians' interpretations. Thus, the administrative law judge's decision does not comply with the Administrative Procedure Act (APA), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Therefore, we must vacate the administrative law judge's finding that the March 14, 2012 x-ray evidence did not support a finding of complicated pneumoconiosis.

Claimant and the Director argue that the administrative law judge's error regarding the March 14, 2012 x-ray tainted his consideration of the June 7, 2012 x-ray evidence. Claimant's Brief at 15-16; Director's Brief at 3. We agree. As noted earlier, Dr. Groten read the June 7, 2012 x-ray as positive for Category A large opacities, while Dr. Adcock read the same x-ray as negative for large opacities. The administrative law judge noted that Drs. Groten and Adcock were both dually qualified. Decision and Order at 14-15. The administrative law judge accorded more weight to Dr. Adcock's negative reading and thus found that the June 7, 2012 x-ray did not support a finding of complicated pneumoconiosis. *Id*. at 15. The administrative law judge's only reason for doing so, however, was his determination that Dr. Adcock's negative interpretation "lies in accord with [c]laimant's March 14, 2012 X-ray, which did not exhibit complicated

pneumoconiosis." *Id*. Because the administrative law judge's error in weighing the March 14, 2012 x-ray evidence affected his weighing of the June 7, 2012 x-ray evidence, we must vacate his finding that the June 7, 2012 x-ray did not support a finding of complicated pneumoconiosis.

Therefore, we vacate the administrative law judge's finding that the analog x-ray evidence does not support a finding of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(a). On remand, the administrative law judge must reconsider the analog x-ray evidence and adequately explain his findings. *See Wojtowicz*, 12 BLR at 1-165.

We now turn to the administrative law judge's analysis of the other evidence regarding the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(c), beginning with the medical opinion evidence. The administrative law judge considered opinions from Drs. Forehand, Porterfield, and Dahhan, as well as the joint opinion of three physicians from the OPB. Decision and Order at 15-18.

The administrative law judge stated that he assigned "normal probative weight" to Dr. Forehand's opinion that claimant does not have complicated pneumoconiosis, and to Dr. Porterfield's opinion that claimant suffers from complicated pneumoconiosis. Decision and Order at 18-19; Director's Exhibit 13; Claimant's Exhibit 3. The administrative law judge recognized that Dr. Porterfield is claimant's treating physician, but declined to give "controlling weight" to Dr. Porterfield's opinion, pursuant to 20 C.F.R. §718.104(d), because Dr. Porterfield "found complicated pneumoconiosis based wholly on [the March 14, 2012 x-ray] that the preponderant evidence showed was negative for complicated pneumoconiosis." Decision and Order at 18-19. Next, the administrative law judge gave "little weight" to the opinion of the OPB physicians that claimant has complicated pneumoconiosis because their opinion relied, in part, on an x-ray that is not in the record. Decision and Order at 19. Finally, the administrative law judge accorded "no weight" to Dr. Dahhan's opinion that claimant does not have complicated pneumoconiosis, because claimant does not have a restrictive ventilatory impairment. *Id*. at 20; Employer's Exhibit 6 at 4.

Weighing all of the medical opinion evidence, the administrative law judge determined that it did not support a finding of complicated pneumoconiosis:

> Each of the physician's [*sic*] opinions of record found at least simple pneumoconiosis. Although the OPB Doctors and Dr. Porterfield both opined that Claimant had complicated pneumoconiosis, Drs. Forehand and Dahhan opined that Claimant did not have complicated pneumoconiosis. The physicians' opinions of the OPB doctors and Dr. Porterfield merited less weight and normal probative weight, respectively. Drs. Forehand and

> Dahhan both received normal probative weight. Accordingly, the preponderant weight of the physicians' opinions of record demonstrate[s] a finding of simple, but not complicated pneumoconiosis.

Decision and Order at 20.

As an initial matter, the Director contends that the administrative law judge's errors in weighing the March 14, 2012 analog x-ray evidence affected his analysis of Dr. Porterfield's opinion that claimant has complicated pneumoconiosis. Director's Brief at 4. We agree. The administrative law judge cited no reason other than Dr. Porterfield's reliance on his positive reading of the March 14, 2012 x-ray for giving no more than "normal probative weight" to Dr. Porterfield's opinion.[10] Decision and Order at 18-19; Claimant's Exhibit 3. Because we have held that the administrative law judge erred in weighing the interpretations of the March 14, 2012 x-ray, and vacated his finding that the March 14, 2012 x-ray does not support a finding of complicated pneumoconiosis, we also vacate his determination as to the weight accorded to Dr. Porterfield's opinion.

Claimant and the Director also argue that the administrative law judge did not adequately explain the weight he accorded to Dr. Dahhan's opinion that claimant does not have complicated pneumoconiosis when he weighed that opinion against the opinions diagnosing claimant with the disease. Claimant's Brief at 11-14; Director's Brief at 4. We agree. When analyzing Dr. Dahhan's opinion, the administrative law judge stated that he gave Dr. Dahhan's opinion regarding complicated pneumoconiosis "no weight" because of Dr. Dahhan's reasoning that the absence of a restrictive impairment in claimant precluded the existence of complicated pneumoconiosis.[11] Decision and Order

[10] The administrative law judge noted that Dr. Porterfield is Board certified in Internal Medicine and Pulmonary Disease and treated claimant for his breathing problems for at least one year before evidence was submitted in this claim. Decision and Order at 16; Claimant's Exhibit 3. Further, the administrative law judge found that Dr. Porterfield's credentials gave him "ample authority" to opine on the various alternative diagnoses provided by Drs. Wheeler and Scott in their x-ray readings, and by Dr. Wheeler in his CT-scan readings. Decision and Order at 19.

[11] Discounting Dr. Dahhan's opinion for that reason was proper because establishing disability or impairment is not a prerequisite for establishing the existence of complicated pneumoconiosis. *See* 30 U.S.C. §921(c)(3); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 7 n.4, 3 BLR 2-36, 2-38 n.4 (1976); *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 257-58, 22 BLR 2-93, 2-102-05 (4th Cir. 2000).

at 20; Employer's Exhibit 6 at 4. Yet when weighing all of the medical opinion evidence together, the administrative law judge stated that he gave Dr. Dahhan's opinion "normal probative weight," and determined that it, along with Dr. Forehand's opinion, outweighed the opinions of Dr. Porterfield and the OPB doctors diagnosing claimant with complicated pneumoconiosis. Decision and Order at 20. Because of the unexplained inconsistency in the administrative law judge's weighing of Dr. Dahhan's opinion, his finding that the weight of the medical opinion evidence does not establish complicated pneumoconiosis does not comply with the APA. *See* 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165.

We therefore vacate the administrative law judge's finding that the medical opinion evidence does not support a finding of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(c). On remand, the administrative law judge must reconsider the medical opinion evidence and adequately explain his findings. *See Wojtowicz*, 12 BLR at 1-165.

The Director argues further that the administrative law judge erred in his analysis of the digital x-ray evidence relevant to complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(c). The administrative law judge considered two reports by Dr. Wheeler, indicating that an April 1, 2011 and a November 29, 2011 digital x-ray were unreadable, and including comments as to various abnormalities present on the x-rays. Employer's Exhibits 9, 10. Additionally, the administrative law judge considered that Dr. Ahmed interpreted a February 15, 2013 digital x-ray as positive for Category A large opacities, while Dr. Adcock read the same x-ray as negative for large opacities. Claimant's Exhibit 1; Employer's Exhibit 1. The administrative law judge gave "less weight" to Dr. Wheeler's reports, and "normal probative weight" to Dr. Adcock's negative reading of the February 15, 2013 digital x-ray. Decision and Order at 27. The administrative law judge discounted Dr. Ahmed's positive interpretation, however, because it lacked "a statement indicating the reliability of [digital x-ray] testing, as required under [20 C.F.R.] § 718.107(b)," and because it "lack[ed] the foundation necessary to show its equivalence to an analog x-ray. . . ." *Id*.

The Director contends that the administrative law judge erred in discounting Dr. Ahmed's positive interpretation of the February 15, 2013 digital x-ray. Director's Brief at 5. We agree. The Director points out that Drs. Adcock and Ahmed both provided readings of the same digital x-ray, taken on February 15, 2013. Employer's Exhibit 1; Claimant's Exhibit 1. Based on Dr. Adcock's interpretation, the administrative law judge

found that this digital x-ray met the requirements of 20 C.F.R. §718.107(b).[12] Decision and Order at 27. In this context, the administrative law judge failed to provide a valid rationale for rejecting Dr. Ahmed's positive reading of the same digital x-ray as not medically acceptable and relevant. *See Wojtowicz*, 12 BLR at 1-165.

We also agree with the Director that, contrary to the administrative law judge's determination, the record contains information which, if credited, could support a finding that Dr. Ahmed's positive reading of the February 15, 2013 digital x-ray would equate to an analog x-ray reading of large opacities greater than one centimeter in diameter, pursuant to 20 C.F.R. §718.304(a). *See Scarbro*, 220 F.3d at 255-56, 22 BLR at 2-101. Specifically, Dr. Ahmed also interpreted the March 14, 2012, analog x-ray as positive for Category A large opacities, pursuant to 20 C.F.R. §718.304(a), and that reading was not discounted by the administrative law judge. Director's Exhibit 24. The administrative law judge failed to explain why he could not determine whether Dr. Ahmed's reading of Category A large opacities on the February 15, 2013 digital x-ray was "an equivalent diagnostic result" to Dr. Ahmed's reading of the March 14, 2012 analog x-ray. *See Scarbro*, 220 F.3d at 255-56, 22 BLR at 2-101; *Wojtowicz*, 12 BLR at 1-165; Claimant's Exhibit 1.

Therefore, we vacate the administrative law judge's finding that the digital x-ray evidence does not support a finding of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(c). On remand, the administrative law judge must reconsider the digital x-ray evidence, determine whether it supports a finding of complicated pneumoconiosis, determine whether the digital x-ray interpretations diagnosing complicated pneumoconiosis are equivalent to the diagnoses under 20 C.F.R. §718.304(a), and explain his findings. *See Scarbro*, 220 F.3d at 255-56, 22 BLR at 2-101; *Wojtowicz*, 12 BLR at 1-165.

Finally, the Director contends that the administrative law judge erred in his consideration of the CT-scan evidence. The administrative law judge found that the CT-scan evidence was in equipoise as to the existence of complicated pneumoconiosis. Decision and Order at 24. The Director specifically argues that the administrative law judge erred when he discredited two CT-scan readings contained in claimant's treatment notes, because claimant failed to establish that they were medically acceptable and

[12] Dr. Adcock's interpretation included his statement that when he was actively practicing, "all chest radiograph readings in our large healthcare organization were based on digitized plain films of the type represented in this case." Employer's Exhibit 1.

relevant, under 20 C.F.R. §718.107(b).[13] Director's Brief at 4. However, the administrative law judge also discounted the CT-scan readings by claimant's treating physicians because their radiological credentials are not in the record. Decision and Order at 24. Neither claimant, nor the Director, has challenged that determination. Therefore, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because the administrative law judge provided a separate, valid reason for discounting the CT-scan readings of claimant's treating physicians, we need not address the Director's argument that the administrative law judge erred in applying the regulation at 20 C.F.R. §718.107(b) to those CT-scan readings. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we affirm the administrative law judge's finding that the CT-scan evidence was in equipoise as to the existence of complicated pneumoconiosis.

In summary, we vacate the administrative law judge's finding that claimant failed to establish the existence of complicated pneumoconiosis. On remand, the administrative law judge must reconsider all of the relevant evidence and determine whether claimant has established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *See Lester*, 993 F.2d at 1145-46, 17 BLR at 2-1145-46; *Melnick*, 16 BLR at 1-33-34. In accordance with the APA, the administrative law judge must explain the bases for his findings of fact and conclusions of law. *Wojtowicz*, 12 BLR at 1-165. If, on remand, the administrative law judge determines that the evidence does not establish complicated pneumoconiosis, he must deny benefits, because claimant has failed to establish total disability, an essential element of entitlement under 20 C.F.R. Part 718, absent invocation of the irrebuttable presumption at 20 C.F.R. §718.304. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

[13] The Director notes that the administrative law judge determined that "all of the affirmative CT scans of record" met the requirements of 20 C.F.R. §718.107(b), including Dr. Wheeler's readings of the two CT-scans in claimant's treatment notes. Director's Brief at 4; Decision and Order at 23. The Director argues that the record contains sufficient evidence to demonstrate that the two CT-scans at issue are acceptable and relevant, and that the administrative law judge failed to explain how interpretations of those same CT-scans could be reliable when offered by employer, but not when offered by claimant. Director's Brief at 4-5.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge