U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 23-0303 BLA

ROY H. MEADOWS, JR. Claimant-Respondent v. ROY H. MEADOWS & SONS MANUFACTURING and OLD BAY REPUBLIC INSURANCE COMPANIES Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 12/23/2024 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of William P. Farley, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Paul Frampton (Bowles Rice, LLP), Charleston, West Virginia, for Employer and its Carrier.

Amanda Torres (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Jennifer Feldman Jones, Deputy Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

BUZZARD and JONES, Administrative Appeals Judges:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits (2020-BLA-05424) rendered on a subsequent claim filed on October 10, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Employer is the properly designated responsible operator. He also found Claimant established 13.91 years of coal mine employment and complicated pneumoconiosis. He therefore found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act and established a change in an applicable condition of entitlement.[2] 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c). Finally, the ALJ found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203, and awarded benefits.

[1] Claimant filed three previous claims. The district director denied Claimant's first claim on November 21, 2003, because he failed to establish any element of entitlement. Director's Exhibit 1. Claimant filed but withdrew his second and third claims. Director's Exhibits 2, 3. Withdrawn claims are considered not to have been filed. 20 C.F.R. §725.306(b).

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish any element of entitlement in his prior claim, he had to submit new evidence establishing one element to obtain review of the merits of his current claim. Director's Exhibit 1; *see White*, 23 BLR at 1-3.

On appeal, Employer challenges its designation as the responsible operator and the ALJ's finding that Claimant established complicated pneumoconiosis. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Benefits Review Board to reject Employer's responsible operator arguments.

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

Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner" for at least one year.[4] 20 C.F.R. §§725.494(c), 725.495(a)(1). The Director bears the burden of proving the responsible operator is a potentially liable operator. 20 C.F.R. §725.495(b). Once designated, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

Employer does not dispute that it meets the regulatory definition of a potentially liable operator. 20 C.F.R. §725.494(a)-(e); Decision and Order at 4-5. Thus we affirm that finding. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Nor does Employer allege it is financially incapable of assuming liability for benefits. Thus, it can avoid

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 26-27.

[4] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

liability only by establishing that another financially capable operator employed Claimant more recently for at least one year.

The ALJ addressed Employer's argument that either North Branch Coal or Shenandoah Coal should have been named the responsible operator. Decision and Order at 4-5; Employer's Post-Hearing Brief at 2-6. With respect to North Branch Coal, the ALJ found Claimant worked for this entity from 1992 to 1993, but also found "Employer has not shown by admissible evidence that [Claimant] regularly worked in or around a coal mine while employed by North Branch." Decision and Order at 5. He also found Employer did not submit any evidence establishing Shenandoah Coal is financially capable of assuming liability for the payment of benefits. *Id*. Thus he held Employer is the properly designated responsible operator.

North Branch Coal

Employer argues there is evidence that Claimant worked as a coal miner for North Branch, contrary to the ALJ's finding. Employer's Brief at 6-8. Specifically, it first asserts Claimant's sworn testimony establishes he worked as a coal miner for North Branch. *Id*. At 6-7.

As the Director correctly responds, however, Employer is precluded from relying on Claimant's testimony as liability evidence because it failed to timely designate him as a liability witness before the district director. Director's Response Letter at 3-4. The regulation set forth in 20 C.F.R. §725.414(c) provides:

> [A]ll parties must notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the designated responsible operator. Absent such notice, the testimony of a witness relevant to the liability of a potentially liable operator or the designated responsible operator will not be admitted in any hearing conducted with respect to the claim unless [the ALJ] finds that the lack of notice should be excused due to extraordinary circumstances.

20 C.F.R. §725.414(c). Thus Employer is precluded from relying on Claimant's testimony on the responsible operator issue because Claimant was not designated as a liability witness at any point before the district director and Employer does not identify grounds for its admission.[5] 20 C.F.R. §725.414(c). Hence, the ALJ did not err in failing to consider Claimant's testimony on the liability issue. *Id*.

[5] Where no party provides notice to the district director of the name and address of a witness whose testimony pertains to the liability of a potentially liable operator, the

Employer also argues Claimant's employment history form supports a finding that Claimant worked in coal mine employment for North Branch from 1992 to 1993 because Claimant generally indicated on the form that he worked in coal mining from 1979 to 1994. Employer's Brief at 6-8, *citing* Director's Exhibit 7. To the contrary, given the ALJ's finding that Claimant had 13.91 years of coal mine employment from 1976 through 1994, Claimant could not have worked continuously in coal mine employment during these nineteen calendar years. Employer has not identified evidence establishing that Claimant's specific work with North Branch in 1992 and 1993 constituted coal mine work.[6] Thus we reject its argument that the ALJ erred in finding North Branch was not a potentially liable operator.

Shenandoah Coal

With respect to Shenandoah Coal, the ALJ found Employer failed to establish this entity is capable of assuming liability for the payment of benefits, and he therefore rejected Employer's argument that Shenandoah should have been named the responsible operator. Decision and Order at 5. We hold that the ALJ erred by failing to properly apply the regulation at 20 C.F.R. §725.495(d) when making this finding.

If the operator designated as responsible is not the operator that most recently employed the miner, the regulations require the district director to explain the reason for such designation. 20 C.F.R. §725.495(d). If the reasons include the more recent operator's inability to pay for benefits, the district director must provide a statement that the Office of Workers' Compensation Programs (OWCP) has no record of insurance coverage or authorization to self-insure for that employer as of the miner's last day of employment. *Id*. Such a statement in the record constitutes prima facie evidence that the subsequent employer is not financially capable of paying benefits. *Id*. If the record lacks such a

witness's testimony "will not be admitted in any hearing" absent extraordinary circumstances. 20 C.F.R. §725.414(c). Employer did not notice Claimant as a liability witness in the prior claim or the present claim, nor did it argue extraordinary circumstances before the ALJ in this claim.

[6] Employer asserts that if Claimant's work with North Branch does not constitute coal mine employment, then his work with other operators also does not constitute coal mine work and his total number of years of coal mining should be reduced. Employer's Brief at 6-7. As the ALJ noted, however, Employer stipulated to 13.91 years of coal mine employment. Decision and Order at 8. Stipulations of fact fairly entered into are binding on the parties. *Richardson v. Director, OWCP*, 94 F.3d 164, 167 (4th Cir. 1996); *Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 730 (7th Cir. 2013).

statement, however, the subsequent employer is presumed to be financially capable of paying benefits. *Id*.

In a December 9, 2019 Proposed Decision and Order, the district director indicated Claimant worked for Shenandoah until "July 7, 1994 due to an injury" but returned to work for one day in December 1994. Director's Exhibit 33 at 12. She did not designate Shenandoah as the responsible operator because it is not financially capable of paying benefits. *Id*. She noted OWCP provided a statement indicating it searched the relevant records but had no record of insurance coverage or authorization to self-insure for Shenandoah as of Claimant's last day of employment. *Id*. The relevant statement itself indicates that OWCP assumed the last day of employment was December 31, 1994. Director's Exhibit 21.

Before the ALJ, the Director argued Shenandoah Coal is not financially capable of paying benefits because it was not insured or authorized to self-insure on Claimant's last day of employment with it. Solicitor's Position Statement at 1-2. The Director represented that, "[n]ot knowing what date in December was [] Claimant's actual last day, the [d]istrict [d]irector assumed that the last day of his employment was *December 1, 1994*." *Id*. (emphasis added). Citing the statement from OWCP, the Director stated that "[a]s of that date, the United States [DOL] had no record of an active insurance policy for Shenandoah."[7] *Id*., *citing* Director's Exhibit 12.

The ALJ summarily found Shenandoah Coal is not a potentially liable operator because Employer did not establish it is financially capable of assuming liability for the claim. Decision and Order at 5. The ALJ erred, however, by failing to render a finding as to Claimant's actual last day of coal mine employment with Shenandoah. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). The record contains references to December 1, 1994 and December 31, 1994 as Claimant's last day of employment. If OWCP searched the incorrect date, the statement it provided pursuant to 20 C.F.R.

[7] The Director reiterated that the district director "relied on the analysis and the representation of the [DOL's] Division of Coal Mine Workers' Compensation Branch of Standards, Regulations and Procedures (BSRP)." Director's Position Statement at 1-2. The Director noted the BSRP "maintains records of insurance and self-insurance information submitted to the [DOL] under 20 C.F.R. Part 726" and those "records allow BSRP to determine, based upon the last date of a miner's employment with a particular coal mine operator, whether the operator secured its liability for any benefits that might be payable to that miner or his or her survivors." *Id*. The Director stated that this "search resulted in the finding that Shenandoah was not covered by an active insurance policy on the Claimant's last date of employment with Shenandoah." *Id*.

§725.495(d) may not be effective, in which case Shenandoah would be presumed to be financially capable of paying benefits. *Id*.

Employer also argues that the ALJ failed to address evidence from Claimant's previous claim that shows Shenandoah has insurance for the relevant period and thus is financially capable of paying benefits. Director's Exhibit 1, Employer's Brief at 4-6. As the ALJ has not addressed this evidence or Employer's and the Director's arguments regarding this evidence, he must do so on remand. *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *McCune v. Cent. Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984) (ALJ's failure to consider all relevant evidence requires remand); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993); Director's Brief at 3 (unpaginated). Thus we vacate the ALJ's responsible operator finding and remand this case for further consideration.

Invocation of the Section 411(c)(3) Presumption

Turning to the merits of the case, Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by chest x-ray, yields one or more large 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, is a condition that would yield results equivalent to (a) or (b). *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The ALJ must 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 Claimant has invoked the irrebuttable presumption. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-rays and medical opinions support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a), (c); Decision and Order at 11-16. He further determined the results of the computed tomography (CT) scans neither support nor undermine a finding of complicated pneumoconiosis.[8] 20 C.F.R. §718.304(c); Decision and Order at 14-15. Weighing all the evidence together, the ALJ concluded Claimant established complicated pneumoconiosis based on the x-rays and medical opinion evidence. 20 C.F.R. §718.304(a), (c); Decision and Order at 16.

[8] The record contains no biopsy or autopsy evidence. 20 C.F.R. §718.304(b).

Employer argues the ALJ erred in finding the x-rays and medical opinions support a finding of complicated pneumoconiosis. Employer's Brief at 8-14. It also argues the ALJ erred in finding the CT scan evidence does not undermine the existence of the complicated pneumoconiosis. *Id.* at 12-13.

Chest X-rays – 20 C.F.R. §718.304(a)

The ALJ considered ten interpretations of six x-rays dated December 21, 2009, May 2, 2016, November 26, 2018, August 13, 2019, April 27, 2021, and April 28, 2021. Decision and Order at 11-14. All the interpreting physicians are dually-qualified B readers and Board-certified radiologists. Director's Exhibits 15, 16; Claimant's Exhibits 1, 3, 7; Employer's Exhibits 1, 7, 8.

Dr. Daniel read the December 21, 2009 x-ray as showing previous granulomatous infections in the left mid lateral lung zone. Employer's Exhibit 4 at 7. Dr. Crum read the May 2, 2016 x-ray as positive for complicated pneumoconiosis with Category A large opacities, while Dr. Godwin read the x-ray as negative for complicated pneumoconiosis. Claimant's Exhibit 3; Employer's Exhibit 8. Dr. Crum read the November 26, 2018 x-ray as positive for complicated pneumoconiosis with Category A large opacities, while Drs. DePonte and Godwin read the x-ray as negative for the disease. Director's Exhibits 15 at 35, 16; Employer's Exhibit 2. Dr. Crum read the August 13, 2019 x-ray as positive for complicated pneumoconiosis with Category B large opacities, while Dr. Kendall read the x-ray as negative for the disease. Claimant's Exhibit 1; Employer's Exhibit 1. Dr. Seaman read the April 27, 2021 x-ray as negative for complicated pneumoconiosis but noted there is a "possible large opacity of [Category] A." Employer's Exhibit 7. Dr. Crum read the April 28, 2021 x-ray as positive for complicated pneumoconiosis with Category A large opacities. Claimant's Exhibit 7. We are unable to affirm the ALJ's determination that the preponderance of the x-ray evidence supports a finding of complicated pneumoconiosis. Decision and Order at 14.

We agree with Employer's argument that the ALJ failed to resolve the conflicts in the x-ray evidence or adequately explain why he found the x-ray readings support a finding of complicated pneumoconiosis. Employer's Brief at 11-12; Decision and Order at 13. The ALJ summarized the x-ray interpretations but failed to render any clear findings with the exception of finding the November 26, 2018 x-ray established simple pneumoconiosis and was in equipoise for complicated pneumoconiosis. Decision and Order at 11-14. The ALJ summarily found the May 2, 2016, and April 28, 2021 x-rays, both of which Dr. Crum read as positive for complicated pneumoconiosis, established complicated pneumoconiosis and were consistent with Dr. Rao's CT scan findings. *Id.* at 14. Nevertheless, he failed to weigh Dr. Crum's positive reading of the May 2, 2016 x-ray against Dr. Godwin's contrary negative reading of the same x-ray. *Id.* Moreover, the

ALJ's finding that Dr. Crum's readings are more consistent with Dr. Rao's CT scan findings is unexplained as the ALJ made no specific findings regarding the credibility of the CT scan interpretations. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a);[9] Decision and Order at 13.

Because the ALJ did not resolve conflicts in the evidence or provide an adequate rationale for his findings, we vacate his determination that the x-ray evidence supports a finding of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a) and remand the case for further consideration.[10] *See McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (Board lacks the authority to render factual findings to fill in gaps in the ALJ's decision).

Other Medical Evidence – 20 C.F.R. §718.304(c)

The record contains nine interpretations of five CT scans dated November 10, 2013, July 7, 2016, February 3, 2017, February 5, 2018, and June 29, 2020. Claimant's Exhibit 2 at 28, 72, 75, 85, 111; Employer's Exhibit 3. The ALJ generally summarized the interpretations of the CT scans but failed to make any findings except to say he gave less weight to Dr. Godwin's opinion.[11] Decision and Order at 14-16. We agree with Employer's argument that the ALJ erred in his consideration of the CT scans. Employer's Brief at 12-13. As Employer correctly notes, the record contains conflicting evidence regarding the size and nature of the nodules seen on Claimant's CT scans. *Id.*

[9] The Administrative Procedure Act (APA), 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[10] Because we vacate the ALJ's findings that the x-ray evidence supports a finding of complicated pneumoconiosis, we need not address Employer's additional arguments regarding the credibility and weight he accorded Dr. Crum's and Dr. Seaman's readings. Employer's Brief at 11-12 nn.2, 3. On remand, the ALJ must reconsider all the x-ray interpretations and adequately set forth the bases for his credibility determinations as required by the APA.

[11] As the ALJ rendered this finding in the "Weighing the Evidence" section rather than the section discussing the CT scan evidence and because Dr. Godwin read multiple CT scans and x-rays, it is unclear which of Dr. Godwin's opinions the ALJ is referring to. Decision and Order at 16.

Dr. Rao read the November 10, 2013 CT scan as showing multiple noncalcified and calcified pulmonary nodules likely secondary to complicated pneumoconiosis. Claimant's Exhibit 2 at 111. Dr. Godwin read this scan as showing small nodules concentrated in the upper lungs with calcified granulomas, and mediastinal and hilar lymphadenopathy with calcification. Employer's Exhibit 3 at 1.

Dr. Ramakrishnan read the July 7, 2016 CT scan as showing extensive nodular changes, primarily in the upper lung zones, with the nodules measuring from four to ten millimeters; a bandlike area of scarring and distortion in the left upper lobe; and a calcified granuloma in the left lower lobe. His impression was that the overall findings are suggestive of pneumoconiosis. Claimant's Exhibit 2 at 85. Dr. Godwin read the scan as showing small nodules measuring up to six millimeters concentrated in the upper lungs, atelectasis in the left upper lobe associated with narrowing of the upper lobe bronchus by lymphadenopathy, calcified granulomas, and mediastinal and hilar lymphadenopathy with calcification. Employer's Exhibit 3 at 1.

Dr. Godwin read the February 3, 2017 CT scan as similar to the 2016 scan. Employer's Exhibit 3 at 1. Dr. Ramakrishnan read the scan as showing a bandlike area of fibrosis and scarring of the left upper lobe (stable from prior examination), azygos lobe in the right side, and found that the nodular changes of the right upper lobe are stable. He noted, "Calcified hilar and mediastinal lymph nodes are seen as well, overall similar to prior study and consistent with pneumoconiosis." Claimant's Exhibit 2 at 75.

Dr. Ramakrishnan read the February 5, 2018 CT scan as showing significant interstitial fibrosis with stable partial obstruction in the left upper lobe bronchus, multifocal nodular changes of the right lung apex and small nodules in the superior segment left lower lobe. Claimant's Exhibit 2 at 72. Dr. Godwin read the scan as showing "less atelectasis" in the left upper lobe than his earlier findings.[12] Employer's Exhibit 3 at 1.

Dr. Ramakrishnan read the June 29, 2020 CT scan as showing significant left upper lobe consolidation with evidence of presumable left upper lobe bronchial obstruction that could be related to extrinsic compression from left suprahilar lymphadenopathy, and

[12] Dr. Godwin also provided a conclusion as to the three scans he read. Employer's Exhibit 3 at 1. He opined there were: 1) a profusion of small opacities, consistent with uncomplicated coal workers' pneumoconiosis, 2) evidence of remote granulomatous infection, and 3) atelectasis in the left upper lobe, associated with bronchial narrowing by hilar lymphadenopathy. *Id.*

otherwise stable underlying fibrosis and calcified lymphadenopathy.[13] Claimant's Exhibit 2 at 28.

The ALJ was required to reconcile these conflicting readings in his consideration of the CT scans and explain his determination regarding whether they support a finding of complicated pneumoconiosis under 20 C.F.R. §718.204(c). *See Wojtowicz*, 12 BLR at 1-165; *see also* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). He failed to do so. Thus, the ALJ's consideration of the evidence is not adequately explained. Employer's Brief at 12-13.

Moreover, we agree the ALJ failed to consider all the medical opinion evidence, resolve conflicts in the evidence, and explain his weighing of the categories of evidence together. Employer's Brief at 12-14. In weighing the evidence as a whole, the ALJ cited his x-ray findings and Dr. Green's conclusions, without previously analyzing and explaining his findings and conclusions as to the medical reports of Drs. Green, Crum, and Tuteur, or the treatment records. *McCune*, 6 BLR at 1-998 (failure to discuss relevant evidence requires remand); Decision and Order at 15.

The ALJ is required to determine whether complicated pneumoconiosis has been established by weighing together all categories of the evidence presented. 20 C.F.R. §718.304; *see Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56; *Melnick*, 16 BLR at 1-33. Based on the foregoing, we vacate the ALJ's finding that the evidence, when weighed together, establishes complicated pneumoconiosis. Therefore, we vacate his finding Claimant invoked the Section 411(c)(3) presumption and established a change in the applicable condition of entitlement, 20 C.F.R. §§718.304(a), (c), 725.309. Thus, we vacate the award of benefits.

Remand Instructions

On remand, the ALJ must reconsider the evidence and determine whether Roy H. Meadows & Sons Manufacturing is the properly designated responsible operator. On the merits, he must reconsider whether Claimant has established complicated pneumoconiosis. He must first reconsider whether the x-ray evidence establishes the disease. 20 C.F.R. §718.304(a). Then, he must reconsider whether the CT scans and medical opinion evidence support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c). When considering the CT scan reports of Drs. Godwin, Rao, and Ramakrishnan, the ALJ must address the bases for their opinions and the reasons they provided for determining why Claimant does or does not have complicated pneumoconiosis. 20 C.F.R. §718.304(c). The

[13] Under "History" he noted shortness of breath and coal workers' pneumoconiosis; however, the basis for this history is unstated. Claimant's Exhibit 2 at 28.

ALJ should resolve any conflict in the location and shape of nodules that the physicians identify and determine if any nodule satisfies the definition of complicated pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The ALJ must also weigh the medical opinions of Drs. Green, Crum, and Tuteur, taking into consideration his x-ray and CT scan findings. 20 C.F.R. §718.304(c). He must address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Akers*, 131 F.3d at 441. Finally, the ALJ must also weigh all relevant evidence on the issue of complicated pneumoconiosis together, interrelating the evidence from each category, before determining whether Claimant invoked the Section 411(c)(3) presumption. *See Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56. In rendering his findings, the ALJ must place the burden on Claimant to establish complicated pneumoconiosis, recognizing that there is no presumption of having the disease.[14] *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc). He must also adequately explain his findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

If Claimant establishes he has complicated pneumoconiosis, he is entitled to the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The ALJ must then determine whether his complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203. If the ALJ determines Claimant has established complicated pneumoconiosis arising out of his coal mine employment, he may reinstate the award of benefits. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 718.203. However, if the ALJ finds Claimant did not establish complicated pneumoconiosis, he must determine whether Claimant can establish entitlement under 20 C.F.R. Part 718 independent of a finding of complicated pneumoconiosis.

[14] If Claimant establishes complicated pneumoconiosis, the disease is presumed to have arisen out of his coal mine employment because he established more than ten years of coal mine employment; consequently, the burden will then be on Employer, as the party opposing entitlement, to disprove disease causation. 20 C.F.R. §718.203(b).

Accordingly, we affirm in part and vacate in part ALJ's Decision and Order Awarding Benefits, and we remand this case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I respectfully dissent from the majority's decision to affirm the ALJ's findings regarding North Branch Coal. Employer argues evidence from the Miner's previous claim, including his testimony, shows he performed coal mine work for North Branch Coal and Fiddle Creek Coal, that those two companies should be treated as one, and that when the Miner's employment with those companies is combined, as the regulation provides, the Miner was employed by them for over one year. Employer's Brief at 6-8. The majority finds the ALJ did not err in considering this evidence because the Miner was not designated as a witness for liability purposes in this claim. *Supra* at 6.

I would find the ALJ erred in not considering this evidence. Evidence submitted in connection with a prior claim must be made a part of the record in a subsequent claim, provided it was not excluded in the adjudication of the prior claim. 20 C.F.R. § 725.309(c)(2). Thus, the Miner's evidence as to his coal mine employment with the two companies, including his testimony, is in the record, as are DOL's actions regarding the two companies. The Miner is not a witness in this case for liability purposes; rather, because the evidence from the prior case is in evidence and isn't "witness" testimony for this case, it and the other relevant evidence he submitted in connection with his prior claim

are documentary evidence the ALJ should have considered, along with the evidence pertaining to DOL's prior treatment of the two companies.

Therefore, I would vacate the ALJ's findings regarding North Branch Coal and would remand for further findings, based on the evidence of record from the previous claim, regarding the length and nature of the Miner's work for it and for Fiddle Creek Coal, and on the relationship between those companies, in the event the ALJ finds Shenandoah Coal is not the responsible operator because it lacks financial capability to pay.

I otherwise concur with the majority in all other respects.

JUDITH S. BOGGS
Administrative Appeals Judge