U.S. Department of Labor

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

BRB No. 16-0324 BLA

RHONDA SUE GOOD (Widow of HOMER GOOD)	)	
Claimant-Respondent	)	
v.	)	
GLEN ALLEN MINING, INCORPORATED	)	
and	)	DATE ISSUED: 04/26/2017
EMPLOYERS INSURANCE OF WAUSAU	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits on Remand (2010-BLA-05646) of Administrative Law Judge Steven D. Bell rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on September 18, 2009 and is before the Board for the third time.[1]

In the most recent appeal, the Board affirmed, as unchallenged on appeal, the determination of Administrative Law Judge Stephen M. Reilly to exclude evidence concerning the suspension of Dr. Dennis's medical license. *Good v. Glen Allen Mining, Inc.*, BRB No. 14-0176 BLA, slip op. at 3 (Feb. 27, 2015) (unpub.). The Board vacated, however, Judge Reilly's finding that Dr. Dennis's opinion established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b). *Id*. at 10-11. Specifically, the Board held that Judge Reilly failed to adequately address the credibility of Dr. Dennis's opinion and failed to resolve the conflict between Drs. Dennis and Oesterling on the issue. The Board therefore vacated the administrative law judge's finding that claimant invoked the irrebuttable presumption that the miner's death was due to pneumoconiosis. *Id*. Accordingly, the Board vacated the award of survivor's benefits and remanded the case for further consideration.

On remand, because Judge Reilly had retired, the case was reassigned to Administrative Law Judge Steven D. Bell (the administrative law judge), who credited Dr. Dennis's opinion over Dr. Oesterling's, and found that claimant[2] established that the miner suffered from complicated pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

Employer argues on appeal that the administrative law judge erred in crediting Dr. Dennis's opinion, and discrediting Dr. Oesterling's opinion, to find the existence of complicated pneumoconiosis established. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a brief in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational,

[1] We incorporate the procedural history of the case as set forth in the Board's prior decisions, *Good v. Glen Allen Mining, Inc.*, BRB No. 12-0661 BLA (July 30, 2013) (unpub.), and *Good v. Glen Allen Mining, Inc.*, BRB No. 14-0176 BLA (Feb. 27, 2015) (unpub.).

[2] Claimant is the widow of the miner, Homer Good, who died on June 23, 2006. Director's Exhibit 10.

and is 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 Associates, Inc*., 380 U.S. 359 (1965).

Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner's death was due to pneumoconiosis if the miner was 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). 20 C.F.R. §718.304. 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 20 C.F.R. §718.304 has been established. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 387, 21 BLR 2-615, 624 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

On remand, the administrative law judge considered the autopsy reports from Drs. Dennis and Oesterling and their deposition testimony, pursuant to 20 C.F.R. §718.304(b).[4] Dr. Dennis, who at the time was Board-certified in anatomical and clinical pathology, performed the autopsy of the miner's heart and lungs. Dr. Dennis reported on gross examination of the right lung that "[t]he pleural surface is marked by macular development greater than 2 [centimeters] in diameter" with "[f]ibrinous exudative change" and on gross examination of the left lung that "[a] variable pattern of pigment deposition is noted with macules measuring 3 to 5 [centimeters] in diameter in focal areas . . . ." Director's Exhibit 13 at 2. In his microscopic examination, Dr. Dennis observed "macular development greater than 2 [centimeters] in diameter, black pigment clusters in alveolar spaces, and fibrosis in the interstitium," and "plentiful" black pigment clusters

[3] The record reflects that the miner's last coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] The record does not contain evidence relevant to the existence of complicated pneumoconiosis for consideration pursuant to 20 C.F.R. §718.304(a), (c).

"scattered throughout the entire architecture," noting that "the black particles contain silica in abundance." *Id*. at 2-3. Based on these observations, Dr. Dennis diagnosed "anthracosilicosis, moderate to severe, with progressive massive fibrosis," and "macular development greater than 3 [centimeters] in diameter with brisk deposits of anthracosilicotic pigment and silica particles scattered throughout the entire lung." *Id*. at 3.

Dr. Oesterling, who is Board-certified in anatomical and clinical pathology and nuclear medicine, reviewed the miner's death certificate, as well as Dr. Dennis's report and the autopsy slides. Dr. Oesterling diagnosed "a mild coal workers' pneumoconiosis, which was micronodular and macular," but he did not agree with Dr. Dennis's diagnosis of progressive massive fibrosis. Employer's Exhibit 2 at 3. Dr. Oesterling stated that Dr. Dennis's gross examination findings were not substantiated by his review of the tissue cross-sections. *Id*. Dr. Oesterling further stated that progressive massive fibrosis:

> occurs when we have a heavy micro-nodular distribution of lesions that begin to fuse into aggregates measuring 2 [centimeters]. It is not a macular disease process as Dr. Dennis infers. Thus I can put little credence in Dr. Dennis' conclusions.

Id. at 5.

The administrative law judge determined that Dr. Oesterling's opinion that the miner's autopsy did not show progressive massive fibrosis was not well-reasoned and explained:

> The Department has specifically rejected the view that a doctor must see a two-centimeter lesion on an autopsy or biopsy to diagnose complicated pneumoconiosis, particularly because there is no consensus among doctors that this is a valid criterion. . . . Dr. Oesterling bases his medical opinion, that none of the lesions fulfill the criteria for a diagnosis of progressive massive fibrosis, on a standard for diagnosing progressive massive fibrosis that is not set forth in the regulations.

2016 Decision and Order at 14 (footnotes omitted). In contrast, the administrative law judge found that Dr. Dennis's opinion was "well-documented and well-reasoned" because he supported his diagnosis of progressive massive fibrosis by identifying macular development greater than three centimeters in diameter, and some up to five centimeters, "with brisk deposits of anthrasilicotic pigment and silica particles scattered throughout the lung." *Id*. at 13, 15, *quoting* Employer's Exhibit 1 at 11. The

administrative law judge therefore found that claimant established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304.

Initially, we reject employer's argument that the administrative law judge did not give proper weight to Dr. Oesterling's opinion that the miner did not have complicated pneumoconiosis. The administrative law judge permissibly assigned less weight to Dr. Oesterling's opinion because he applied a standard for diagnosing progressive massive fibrosis that is not set forth in the regulations. *See Pittsburg & Midway Coal Mining Co. v. Director, OWCP* [*Cornelius*], 508 F.3d 975, 986, 24 BLR 2-72, 2-92 (11th Cir. 2007); *see also* 65 Fed. Reg. 79,936 (Dec. 20, 2000) (declining to adopt diagnostic criteria which necessitate a lesion of 2.0 [centimeters] for a diagnosis of complicated pneumoconiosis in 20 C.F.R. §718.106 because "the record does not substantiate the existence of a consensus among physicians for making diagnoses using these criteria . . . ."); 2016 Decision and Order at 14.

Employer next contends that the administrative law judge erred in finding Dr. Dennis's opinion legally sufficient to establish the existence of complicated pneumoconiosis. Employer asserts that Dr. Dennis failed to specifically diagnose "massive lesions" and that there is no evidence establishing that the lesions Dr. Dennis described would appear as an opacity greater than one centimeter in diameter on x-ray. Employer's Brief at 8. Employer's argument lacks merit. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that a miner may establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(b) if the autopsy evidence shows massive lesions or, in the alternative, if the nodules found on autopsy would appear as greater than one centimeter on x-ray. *Gray*, 176 F.3d at 387, 21 BLR at 2-624. An autopsy report need not contain the specific words "massive" or "lesions" in order to satisfy the requirements at 20 C.F.R. §718.304(b). *See Cornelius*, 508 F.3d at 986, 24 BLR at 2-89; *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 365 n.4, 23 BLR 2-374, 2-385 n.4 (4th Cir. 2006) (autopsy report diagnosing "[c]oal worker type pneumoconiosis, complicated type, with progressive massive fibrosis" sufficient to invoke the presumption pursuant to 20 C.F.R. §718.304(b)).

The administrative law judge correctly noted that the term "progressive massive fibrosis" is considered to be equivalent to the term "complicated pneumoconiosis," and when there is a diagnosis of progressive massive fibrosis, it equates to a diagnosis of massive lesions resulting from pneumoconiosis. *See generally Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 1359, 20 BLR 2-227, 2-228 (4th Cir. 1996) (noting that complicated pneumoconiosis is known "by its more dauntingly descriptive name, 'progressive massive fibrosis.'"); 2016 Decision and Order at 10. Therefore, the administrative law judge properly found that the diagnosis of progressive massive fibrosis by Dr. Dennis is supportive of a finding of complicated pneumoconiosis at 20

C.F.R. §718.304(b), specifically stating, "I construe the diagnosis of progressive massive fibrosis as a diagnosis of massive lesions of complicated pneumoconiosis." 2016 Decision and Order at 15; *see Cornelius*, 508 F.3d at 986, 24 BLR at 2-89; *Perry*, 469 F.3d at 365 n.4, 23 BLR at 2-385 n.4; *Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-3, 1-5 (1991). Further, we reject employer's contention that claimant is required to establish that the macular development observed by Dr. Dennis would appear on x-ray as an opacity greater than one centimeter in diameter. A diagnosis of progressive massive fibrosis equates to a diagnosis of massive lesions at 20 C.F.R. §718.304(b), and the Sixth Circuit does not require an equivalency determination when massive lesions are diagnosed. *See Gray*, 176 F.3d at 387, 21 BLR at 2-624.

Employer additionally argues that Dr. Dennis's opinion cannot support a finding of complicated pneumoconiosis because he diagnosed progressive massive fibrosis based on his observation of large areas of pigmentation, without associated fibrosis. 2016 Decision and Order at 11-12; Employer's Brief at 5, 6-7. The administrative law judge considered this argument and rejected it. The administrative law judge acknowledged that a finding of anthracotic pigmentation is insufficient, by itself to establish the existence of pneumoconiosis. 2016 Decision and Order at 13, *citing* 20 C.F.R. §718.202(a)(2). The administrative law judge correctly noted, however, that while Dr. Oesterling opined that the term "macule" does not indicate the presence of a fibrotic reaction to the deposited pigment, Dr. Dennis emphasized that he used the term to describe areas of pigment change "with fibrosis."[5] 2016 Decision and Order at 12-13; Employer's Exhibit 1 at 8-9. Thus, the administrative law judge found that employer misrepresented Dr. Dennis's diagnosis of progressive massive fibrosis as being based solely on areas of pigmented lung tissue. 2016 Decision and Order at 13.

The administrative law judge further found that the pathologists' differing definitions of the term 'macule' did not establish that Dr. Dennis's diagnosis is erroneous, as the relevant inquiry is not the medical standard for diagnosing progressive massive fibrosis, but the legal determination of whether the miner suffered from complicated pneumoconiosis. 2016 Decision and Order at 10-11, *citing E. Associated*

[5] Dr. Dennis agreed that the presence of pigment by itself simply indicates that there has been exposure to coal dust and does not indicate pathological change. Employer's Exhibit 1 at 9. Dr. Dennis explained, however, that his use of "the term macular change in this particular case referred to an injury that is caused by an agent or substance or material coming from within the alveolar spaces extending out to the pleural surface" and that the term "macule implies this fibrous connective tissue. You've got fibrosis -- fibrinous exhibitive changes . . . ." 2016 Decision and Order at 12; Employer's Exhibit 1 at 7.

Coal Corp. v. Director, OWCP [*Scarbro*], 220 F.3d 250, 257-58, 22 BLR 2-93, 2-103-105 (4th Cir. 2000). The administrative law judge rationally concluded that "despite the ambiguity of the term 'macule,'" Dr. Dennis's identification of three to five centimeter areas of macular development with associated fibrosis constitutes sufficient evidence of massive lesions of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304(b). *See Cornelius*, 508 F.3d at 986, 24 BLR at 2-89; *Perry*, 469 F.3d at 365 n.4, 23 BLR at 2-385 n.4; *Gruller*, 16 BLR at 1-5; 2016 Decision and Order at 13; Director's Exhibit 13; Employer's Exhibit 1 at 7, 8-9.

Employer's remaining allegations of error focus on the credibility of Dr. Dennis's opinion. Employer asserts that Dr. Oesterling's opinion establishes that Dr. Dennis's gross examination findings are not supported by the tissue slides. Employer's Brief at 6-8. Noting that the regulations provide that a report of an autopsy "must be accepted unless there is evidence that the report is not accurate or that the claim has been fraudulently represented," the administrative law judge considered Dr. Oesterling's opinion that the large macular developments Dr. Dennis observed on gross examination were not reflected on the tissue slides corresponding to those areas of the lungs.[6] 2016 Decision and Order at 15-19, *quoting* 20 C.F.R. §718.202(a)(2); Employer's Exhibit 3 at 3. Dr. Oesterling reported that the largest macules and nodules that he observed microscopically were approximately two millimeters in their greatest aspect.[7] Employer's Exhibit 3 at 7-8. Dr. Oesterling also disputed Dr. Dennis's conclusion that the amount of coal dust viewed in the miner's hilar lymph node and hilum indicated that the miner had experienced heavy dust exposure. *Id*.

Reviewing Dr. Dennis's conclusions in light of Dr. Oesterling's criticisms, the administrative law judge observed that certain aspects of their reports "complicate[d] meaningful comparison of the potentially divergent microscopic findings." 2016 Decision and Order at 18. Specifically, in his gross description of the miner's respiratory system, Dr. Dennis stated that sections of the right lung were submitted in cassettes A-G,

[6] Dr. Dennis indicated that cassettes A-C contained tissue samples from the right lung reflecting macular development greater than two centimeters in diameter observed on gross examination, while cassettes I-K contained tissue samples from the left lung where macular development measuring three to five centimeters in diameter was observed on gross examination. Director's Exhibit 13 at 2.

[7] Dr. Oesterling acknowledged that the hilar lymph node, measuring two centimeters by one centimeter, contained signs of early scarring and evidence of the presence of coal dust, but did not "document heavy dust exposure as Dr. Dennis has inferred." Employer's Exhibit 2 at 5.

the hilar lymph node was submitted on cassette H, and sections of the left lung were submitted on cassettes I-N. 2016 Decision and Order at 17; Director's Exhibit 13. In his microscopic description and pathological diagnosis, however, Dr. Dennis did not similarly identify his findings by slide or location, making it difficult to directly correlate Dr. Dennis's gross and microscopic findings. 2016 Decision and Order at 18. The administrative law judge noted that Dr. Oesterling's report also contained "anomalies" that made it difficult to correlate his observations with Dr. Dennis's findings. For example, Dr. Oesterling reported that slide I, which formed the basis of his diagnosis of mild micronodular coal workers' pneumoconiosis, was "from the right lung and apparently the upper lobe." 2016 Decision and Order at 16; Employer's Exhibit 2. The administrative law judge observed, however, that Dr. Dennis's gross examination report stated that slide I actually contained tissue from the miner's left lung. *Id.* The administrative law judge found this discrepancy to be significant, in light of Dr. Dennis's statement that slides I-K contained the areas of macular development between three and five centimeters upon which he based his diagnosis of progressive massive fibrosis. 2016 Decision and Order at 16; Director's Exhibit 13.

Further, the administrative law judge found that even when it was clear that Drs. Dennis and Oesterling were reviewing the same tissue, such as the hilar lymph node that both pathologists identified as being on slide H, the pathologists had differing descriptions. In response to Dr. Dennis's statement that the lymph node "showed black pigment deposition in a nodular fashion [and] dense collagenous fibers in a nodular fashion," Dr. Oesterling commented that "this node does show the presence of coal dust, however, it does not document heavy dust exposure as Dr. Dennis has inferred." 2016 Decision and Order at 19; Employer's Exhibit 2 at 2.

The administrative law judge permissibly found that Dr. Oesterling's opinion was "most easily explained as simply a differing conclusion reached from review of the same source material" and did not establish that Dr. Dennis's findings are unsupported or disingenuous. 2016 Decision and Order at 19. In light of his inability to directly compare Dr. Dennis's findings with Dr. Oesterling's observations, and in light of the pathologists' differing descriptions of the same tissue, the administrative law judge permissibly found that there was no documented reason to conclude that Dr. Dennis's gross findings are inadequately supported by the microscopic evidence, and further permissibly found Dr. Dennis's opinion reasoned and documented. *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989) (holding that a determination of whether a physician's report is sufficiently documented and reasoned is a credibility matter left to the trier of fact); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); 2016 Decision and Order at 19. We affirm this finding as supported by substantial evidence. *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005) ("[s]ubstantial evidence is defined as

relevant evidence that a reasonable mind might accept as adequate to support a conclusion.").

Employer also argues that the administrative law judge "ignored the obvious flaws" in Dr. Dennis's reports and testimony that undermine the general credibility of his opinion. Employer's Brief at 3. Specifically, employer asserts that the administrative law judge failed to consider evidence that Dr. Dennis misidentified the date on which he performed the miner's autopsy, disregarded evidence that Dr. Dennis was unsure about whether the autopsy was performed at a hospital or a funeral home, and "dismissed Dr. Dennis's statement that the [m]iner suffered a pulmonary death when he in fact died due to massive head trauma." *Id*. at 4.

Contrary to employer's assertions, the administrative law judge specifically noted that although the autopsy report mistakenly indicated that the autopsy was performed on August 14, 2006, almost two months after the miner's death, Dr. Dennis credibly testified that the date was a "typo" or "a misnomer," and that the autopsy actually occurred on June 23 or 24. 2016 Decision and Order at 5, *citing* Employer's Exhibit 1 at 4. The administrative law judge also noted that while Dr. Dennis initially testified, mistakenly, that the miner's autopsy was performed at a hospital, not at a funeral home, Dr. Dennis explained that he did not always document those details and emphasized that the procedure would be the same wherever it was performed. 2016 Decision and Order at 5; Employer's Exhibit 1 at 4-5. The administrative law judge therefore found that the "inconsistencies in Dr. Dennis's testimony regarding the date and location of the autopsy have no effect whatsoever on the credibility of his progressive massive fibrosis diagnosis" as "his initial findings, including those supportive of a progressive massive fibrosis diagnosis, are unaffected by his ability or inability to remember an autopsy five years after it was performed."[8] *Id*. at 5-6.

Further, with respect to Dr. Dennis's opinion regarding the cause of the miner's death, the administrative law judge noted that Dr. Dennis opined that the miner died a pulmonary death,[9] but that the miner's death certificate stated that the miner died from massive head trauma due to an automobile accident. *Id*. at 6-7, *citing* Director's Exhibits 10, 13. The administrative law judge observed that the death certificate was signed by a

[8] Dr. Dennis performed the miner's autopsy in 2006, and was deposed in 2011. *See* Director's Exhibit 13; Employer's Exhibit 1.

[9] Dr. Dennis stated that the miner "died a pulmonary death with bronchopneumonia, pulmonary congestion and edema, superimposed on a weakened lung by anthracosilicosis, progressive massive fibrosis." Director's Exhibit 13 at 3.

funeral director. 2016 Decision and Order at 7. The administrative law judge declined to credit the funeral director's opinion over that of Dr. Dennis, noting that not only were the funeral director's qualifications unknown, the basis for his conclusion was unknown as there was no evidence establishing that the funeral director "examined the miner, conducted any tests, or reviewed any evidence." *Id*. In contrast, the administrative law judge noted that Dennis is "a [B]oard-certified pathologist" whose medical conclusion was based on a "gross and microscopic examination." *Id*. at 8.

The administrative law judge is charged with determining the credibility of witnesses, and his findings must be upheld if they are supported by substantial evidence. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). We therefore affirm the administrative law judge's permissible finding that the inconsistencies in Dr. Dennis's testimony regarding the date and location of the autopsy, as well as Dr. Dennis's opinion regarding the cause of the miner's death, did not diminish the credibility of his diagnosis of progressive massive fibrosis.[10] *Id.*

Moreover, because the administrative law judge weighed all contrary evidence,[11] explained how he resolved the conflict in the evidence, and acted within his discretion in rendering his credibility determinations, we affirm his finding that claimant proved the existence of complicated pneumoconiosis and was entitled to invoke the irrebuttable presumption of death due to pneumoconiosis. 20 C.F.R. §718.304; *see Gray*, 176 F.3d at 388-89, 21 BLR at 2-626-29; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at

[10] There is no merit to employer's contention that the administrative law judge mechanically credited Dr. Dennis's opinion over that of Dr. Oesterling simply because Dr. Dennis was the autopsy prosector. Employer's Brief at 7. Rather, as set forth above, the administrative law judge first determined the credibility and weight of the doctors' opinions, finding Dr. Dennis "well-reasoned" in contrast to Dr. Oesterling's "not well-reasoned opinion," and then permissibly noted that Dr. Dennis, as the autopsy prosector, "had the [added] benefit of both a gross and microscopic examination of the [m]iner's lungs." 2016 Decision and Order at 14-15; *see Urgolites v. BethEnergy Mines*, 17 BLR 1-20, 1-23 (1992); *Perry v. Mynu Coals, Inc*., 469 F.3d 360, 366, 23 BLR 2-374, 2-386 n.4 (4th Cir. 2006); *Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-3, 1-5 (1991).

[11] Employer also argues that the administrative law judge failed to weigh all of the relevant evidence together. We reject this allegation of error, as employer does not identify any evidence, other than the reports and deposition testimony of Drs. Dennis and Oesterling, that is relevant to the existence of complicated pneumoconiosis and invocation of the irrebuttable presumption set forth in 20 C.F.R. §718.304.

255, 5 BLR at 2-103; *see also Cornelius*, 508 F.3d at 987, 24 BLR at 2-94; *Melnick*, 16 BLR at 1-33-34.

Accordingly, we affirm the administrative law judge's Decision and Order Awarding Benefits on Remand.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge