

date, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. Initially, the administrative law judge determined that claimant established ten and three-quarters years of coal mine employment, crediting claimant's testimony and supporting documentation. However, the administrative law judge found that the medical evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits, arguing that the administrative law judge erred in finding the x-ray evidence and medical opinion evidence insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and (a)(4). In response, the Director, Office of Workers' Compensation Programs (the Director), in a Motion to Remand, which the Board accepts as his response brief, concedes the issue of the existence of pneumoconiosis arising out of coal mine employment and requests that the case be remanded to the administrative law judge for consideration of the remainder of the issues regarding entitlement. In a reply brief, claimant concurs with the Director that the case be remanded to the administrative law judge for further consideration under Part 718.¹

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, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989); *Trent v. Director, OWCP*, 11 BLR 1-26

¹ Inasmuch as the parties do not challenge the administrative law judge's decision to credit claimant with ten and three-quarters years of coal mine employment, this finding is affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

(1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Failure to prove any one of these elements precludes entitlement. *Id.*

On appeal, claimant contends that the administrative law judge erred in failing to find that the evidence established the existence of pneumoconiosis pursuant to Section 718.202(a). However, in a Motion to Remand, the Director concedes that the x-ray evidence of record is sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). Director's Motion to Remand at 2. In addition, the Director concedes that the evidence is insufficient to establish rebuttal of the presumption that claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *Id.* The Director, therefore, requests that the Board reverse the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis arising out of his coal mine employment and remand the case to the administrative law judge for further consideration of the issues of entitlement. *Id.*

In light of the Director's concession, the existence of pneumoconiosis arising out of coal mine employment are no longer issues which need to be resolved by the administrative law judge or addressed by the Board. 20 C.F.R. §§718.202(a); 718.203(b); see generally *Kott v. Director, OWCP*, 17 BLR 1-9 (1992); *Pendley v. Director, OWCP*, 13 BLR1-23 (1989)(*en banc*). Moreover, inasmuch as the administrative law judge did not consider any issue beyond whether claimant established the existence of pneumoconiosis, he must now determine whether the medical evidence is sufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c)(1)-(4). 20 C.F.R. §718.204(c); see *Taylor v. Evans and Gambrel Co., Inc.*, 12 BLR 1-83 (1988); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*). In addition, if, on remand, the administrative law judge finds the evidence sufficient to establish total respiratory disability, he must then determine whether the evidence is sufficient to establish that pneumoconiosis was a substantial contributor to claimant's total disability pursuant to Section 718.204(b). 20 C.F.R. §718.204(b); *Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989).

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed in part, reversed in part and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge