BRB No. 03-0118 BLA

JAMES J. GROSS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	DATE ISSUED: 10/29/2003
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-In-Interest	)	DECISION and ORDER

Appeal of the Determination of Timely Filing of Modification and Decision and Order--Award of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Vincent J. Carroll, Richlands, Virginia, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

Barry H. Joyner (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Determination of Timely Filing of Modification and the Decision and Order--Award of Benefits (2001-BLA-0676) of Administrative Law Judge Richard T. Stansell-Gamm rendered on a claim filed pursuant to the provisions of Title IV

of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. '901 *et seq*. (the Act).[1] Claimant=s initial application for black lung benefits filed with the Social Security Administration (SSA) on June 19, 1973 was denied by SSA on December 10, 1973 and again after further review, on May 7, 1979. Director's Exhibits 78-1, 78-6, 78-7. SSA then forwarded the claim to the Department of Labor, where it was denied on January 7, 1980 because claimant did not establish that his pneumoconiosis arose out of coal mine employment or that he was totally disabled due to pneumoconiosis. Director's Exhibit 78-9. On March 24, 1994, claimant filed his current application, which is a duplicate claim for benefits because it was filed more than one year after the final denial of a previous claim. Director's Exhibit 1; 20 C.F.R. '725.309(d)(2000).

In a Decision and Order issued on September 19, 1997 Administrative Law Judge Paul A. Mapes credited claimant with thirty-one years of coal mine employment[2] and found that claimant was not totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. '718.204(c)(2000). Director's Exhibit 53. Accordingly, Judge Mapes denied benefits.

Upon consideration of claimant=s appeal, the Board affirmed the denial of benefits. *Gross v. Dominion Coal Corp*., BRB No. 98-0211 BLA (Nov. 6, 1998)(unpub.); Director's Exhibit 60. Because no party moved for reconsideration of the Board=s decision or filed a petition for review with the United States Court of Appeals for the Fourth Circuit, the Board=s decision became effective on the date it was filed with the Clerk of the Board. *See* 20 C.F.R. ''802.403(b), 802.406, 802.407(a), 802.410(a); *Stevedoring Servs. of America v. Director, OWCP* [*Mattera*], 29 F.3d 513, 516, 28 BRBS 65, 69-70 (CRT)(9th Cir. 1994)(holding that Aissuance@ of Board=s decision in 33 U.S.C. '921(c) Ameans filed with the Clerk of the Board@); *Butcher v. Big Mountain*

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] The record indicates that claimant=s coal mine employment occurred in Virginia. Director's Exhibit 2. Accordingly, this case arises within the jurisdiction 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*).

Coal, Inc., 802 F.2d 1506, 1507-08, 9 BLR 2-121, 2-122-24 (4th Cir. 1986)(same); *Pifer v. Florence Mining Co.*, 8 BLR 1-498, 1-498-99 (1986). A Board decision is filed on the date it is issued. *See* 20 C.F.R. ''802.403(b); 802.406; 802.407(a); *Mattera*, 29 F.3d at 516, 28 BRBS at 69-70 (CRT). Accordingly, the Board=s decision became effective on November 6, 1998.

On November 8, 1999, the district director received a letter from claimant=s counsel requesting Aa reconsideration based on new medical evidence@ that was enclosed with the letter. Director's Exhibit 61. The letter was dated November 3, 1999. The record contains no evidence regarding the mailing date of the letter. The district director processed claimant=s letter as a timely request for modification pursuant to 20 C.F.R. '725.310(2000), and granted modification of the denial of claimant=s duplicate claim. Director's Exhibits 62, 74. Employer requested a hearing, Director's Exhibit 75, which was held before Administrative Law Judge Richard T. Stansell-Gamm on October 3, 2001. At the hearing, employer argued that claimant=s modification request was untimely because it was filed more than one year after the Board=s November 6, 1998 decision. Hearing Transcript (Tr.) at 9. The administrative law judge reserved ruling on the issue. Tr. at 11.

In a Determination of Timely Filing of Modification issued on December 19, 2001, the administrative law judge found that claimant=s letter constituted a timely request for modification. The administrative law judge found that the one-year time period for requesting modification did not begin to run until claimant actually received the Board=s decision denying his claim. The administrative law judge therefore added seven days for mailing time to the one-year period, giving claimant until November 13, 1999 to request modification. Because claimant=s letter was filed on November 8, 1999, the administrative law judge found that it was timely.

In the ensuing Decision and Order--Award of Benefits issued on September 13, 2001, the administrative law judge found that the new evidence developed on modification established that claimant is totally disabled by a moderate obstructive respiratory impairment which prevents him from performing the heavy labor required by his usual coal mine work as a roof bolter pursuant to 20 C.F.R. '718.204(b). Because the new evidence established an element of entitlement that was previously adjudicated against claimant, the administrative law judge found that a material change in conditions was established pursuant to 20 C.F.R. '725.309(d)(2000) under *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). The administrative law judge further determined that the record as a whole established the existence of pneumoconiosis arising out of coal mine employment, that claimant is totally disabled, and that his total disability

is due to pneumoconiosis. 20 C.F.R. ''718.202(a), 718.203(b), 718.204(c). Accordingly, the administrative law judge awarded benefits, and found that May 1, 1999 was the onset date of claimant=s total disability due to pneumoconiosis.

On appeal, employer contends that claimant=s modification request was untimely and that the administrative law judge therefore lacked jurisdiction to decide the claim. Employer further asserts that the administrative law judge erred in his analysis of the medical evidence when he found that claimant=s total disability is due to pneumoconiosis pursuant to 20 C.F.R. '718.204(c). Claimant responds, urging affirmance. The Director, Office of Workers= Compensation Programs (the Director), has filed a limited response, arguing that the administrative law judge erred by adding seven days to the time period for requesting modification, but asserting that claimant=s modification request was nevertheless timely filed. Employer has filed a reply brief, arguing that the Director misinterprets the plain language of the Act and regulations in concluding that claimant=s modification request was timely.[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 supported by substantial evidence, is rational, and is in accordance with 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).

Section 22 of the Longshore and Harbor Workers= Compensation Act, 33 U.S.C. '922, as incorporated into the Act by 30 U.S.C. '932(a), provides in relevant part:

> Upon his own initiative, or upon the application of any party in interest . . . on the ground of a change in conditions or because of a mistake in a determination of fact by the [administrative law judge], the [administrative law judge] may . . . *at any time prior to one year after the rejection of a claim*, review a compensation case . . . in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation . . . .

33 U.S.C. '922 (emphasis added). Section 22 is implemented by 20 C.F.R.

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[3] We affirm, as unchallenged on appeal, the findings that claimant is totally disabled and has established a material change in conditions pursuant to 20 C.F.R. ''718.204(b), 725.309(d)(2000), that claimant has established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. ''718.202(a), 718.203(b), and that the onset date is May 1, 1999. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

' 725.310(2000), which provides in relevant part:

> Upon his or her own initiative, or upon the request of any party on grounds of a change in conditions or because of a mistake in a determination of fact, the [administrative law judge] may . . . *at any time before one year after the denial of a claim*, reconsider the terms of an award or denial of benefits.

20 C.F.R. ' 725.310(a)(2000)(emphasis added). For purposes of assessing the timeliness of claimant=s modification request in this case, we focus on the date his letter was received by the district director, because the record contains no evidence as to when it was mailed.[4]

[4] Thus, claimant=s allegation that he mailed the letter on November 3, 1999, Claimant=s Brief at 2, is of no assistance in this case. Likewise, claimant=s allegation, raised for the first time on appeal, that he telephoned the district director=s office on October 6, 1999, is not supported by any documentary evidence or testimony of record.

Employer and the Director contend that the administrative law judge erred by adding seven days to the time period for filing the modification request. Their contention has merit. The administrative law judge applied the former 20 C.F.R. '725.311(c)(2000), which provided that AWhenever any notice, document, brief or other statement is served by mail, 7 days shall be added to the time within which a reply or response is required to be submitted.@ 20 C.F.R. '725.311(c)(2000). Contrary to the administrative law judge=s analysis, because this claim was pending on January 19, 2001, it is governed by revised 20 C.F.R. '725.311. 20 C.F.R. '725.2(c). Revised Section 725.311 does not contain a seven-day grace period for all mailed documents,[5] but instead provides that where Athe period within which to file a response commences upon receipt of a document,@ it is presumed, absent evidence to the contrary, that a document was received seven days after it was mailed. 20 C.F.R. '725.311(d). The time period within which claimant had to file his request for modification did not commence upon receipt of the Board=s decision; the time period commenced on the date the Board=s decision became effective. *See* 20 C.F.R. ''802.403(b), 802.406, 802.407(a), 802.410(a); *Stacey v. Cheyenne Coal Co*., 21 BLR 1-111, 1-114 (1999)(affirming administrative law judge=s finding that claimant=s modification request had to be filed within one year of the effective date of the Board=s decision). Thus, by its terms, revised Section 725.311(d) does not apply to computing the time period for filing claimant=s modification request. The administrative law judge=s decision to add seven days to the modification period was improper.[6]

Employer and the Director disagree as to the date by which claimant had to request modification. The Director states that claimant had one year from November 6, 1998, the effective date of the Board=s decision, to request modification and thus had until November 6, 1999 to file his modification request. Because November 6, 1999 was a Saturday, the Director argues that a time computation rule provided in Part 725 gave claimant until the following Monday, November 8, 1999, to file his modification request. Employer replies that claimant did not have one year from November 6, 1998 to request

[5] The Director deleted the seven-day grace period rule in part because it had generated confusion as to the deadline for filing a modification petition. Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended, 65 Fed. Reg. 79,920, 79,977 (Dec. 20, 2000).

[6] Because the former 20 C.F.R. '725.311(c) does not apply to this claim, we need not decide whether it could properly add seven days to the statutory time limit for filing a modification petition.

modification. Employer contends that because Section 22 of the Longshore Act authorizes modification Aat any time prior to one year after the rejection of a claim,@ and Section 725.310(2000) permits modification Abefore one year after the denial of a claim,@ claimant had to file his modification request prior to, not on, November 6, 1999, and thus had only until Friday, November 5, 1999 to file. Employer thus reads the statute as providing a time period of one day less than a year for a party to request modification.

The term Ayear@ is not defined in the Longshore Act. Where a statutory term is undefined, it is assumed to have Aits ordinary or natural meaning.@ *F.D.I.C. v. Meyer*, 510 U.S. 471, 476 (1994). AYear@ ordinarily means a time period of 365 days. *Webster=s II New Riverside University Dictionary* 1334 (1984); *see Pascual v. First Marine Contractors, Inc*., 32 BRBS 289, 290 (1999)(applying the ordinary meaning of Ayear@ to that term in the 1998 Appropriations Act); *Director, OWCP v. Gardner*, 882 F.2d 67, 71, 13 BLR 2-1, 2-8 (holding that Aone year@ in 20 C.F.R. '725.493(2000) means Aa period spanning 365 days@). Thus, at issue herein is whether the phrase Aprior to one year after the rejection of a claim@ in Section 22 means before the 365th day commences, as employer contends, or whether the phrase means before the 365th day ends, as the Director implicitly argues.[7]

We hold that the phrase Aprior to one year after the rejection of a claim@ means before the 365th day ends. Employer emphasizes that Aprior to@ means Abefore,@ and therefore asserts that modification must be sought before the 365th day after the denial. However, effect must be given to every term used in the statutory phrase. 2A N. Singer, *Sutherland on Statutory Construction* '46.06, at 181 (6th rev. ed. 2000). Here, Aprior to@ is followed by the term Aone year@ as it is commonly understood, and by the terms Aafter the rejection of a claim.@ Under a A>normal= or >natural reading,=@ *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 296, 30 BRBS 1, 3 (CRT)(1995)(citation omitted), the entire phrase means that modification must be sought before one year following the claim=s rejection has passed, that is, within one year of the rejection of the claim. It is well established that Anarrowly technical@ construction of Section 22 is disfavored. *Rambo*, 515 U.S. at 297, 30 BRBS at 3 (CRT); *O=Keeffe v. Aerojet-General Shipyards, Inc*., 404 U.S. 254, 255 (1971); *see also Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 268, 6 BRBS 150, 161 (CRT)(1977)(explaining that the Longshore Act is Aremedial legislation@). Employer=s position that Section 22 imposes a 364-day time limit is based on a highly technical construction. Additionally, case law interpreting Section 22 in other contexts supports the conclusion that the natural reading of this phrase is that modification must be sought within one year. *See O=Keeffe*, 404 U.S. at 255 (observing that Aon its face, the section permits a reopening within one year >because of a mistake in a determination of fact=@); *Intercounty Constr. Corp. v.*

[7] The discussion herein should be understood to include leap years.

Walter, 422 U.S. 1, 11, 2 BRBS 3, 9 (1975)(holding that Section 22 imposes a Aone year time limit . . . on the power of the deputy commissioner to modify existing orders@); *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 540, 22 BLR 2-429, 2-442 (7th Cir. 2002)(explaining that ASection 22 allows for a modification petition to be filed at any time within a year of a claim=s rejection@); *I.T.O. Corp. of Va. v. Pettus*, 73 F.3d 523, 526, 30 BRBS 6, 8 (CRT)(4th Cir. 1996)(holding that a modification request Aneed only be sufficient to trigger review before the one-year limitations period expires@); *Jessee v. Director, OWCP*, 5 F.3d 723, 724, 18 BLR 2-26, 2-28 (4th Cir. 1993)(noting that A[u]nsuccessful black lung claimants may, within a year of the final order, request modification of the order@). Consequently, we reject employer=s argument, and hold that under the plain language of Section 22 of the Longshore Act and Section 725.310(2000) of the black lung regulations, claimant had one year from the effective date of the Board=s decision rejecting his claim in which to request modification.

Applying that rule to the procedural facts of this case, we agree with the Director that claimant=s modification request was timely filed. The Board=s decision became effective on November 6, 1998. Section 725.311 provides, in relevant part, that A[i]n computing any period of time described . . . by any applicable statute . . . the day of the act or event from which the designated period of time begins to run shall not be included.@ 20 C.F.R. '725.311(c); *see also* 20 C.F.R. '802.221(a)(providing the same rule).[8] Therefore, day one of the 365 days for claimant to request modification was November 7, 1998, and day 365 was November 6, 1999. As the Director notes, November 6, 1999 was a Saturday. The Director cites Section 725.311(c), which provides further that A[t]he last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday.@[9] 20 C.F.R. '725.311(c). Thus, under the applicable time computation rule, claimant had until Monday, November 8, 1999 in which to file his modification request. Because claimant=s letter requesting modification was filed on Monday, November 8, 1999, we agree with the Director that it was timely. *See Everson v. Stevedoring Servs. of America*, 33 BRBS 149, 154 n.4 (1999)(observing that Section 22 sets a one-year time limit for requesting modification, but Adoes not define the parameters within which such a request must be >filed=@). Consequently, the administrative law judge had jurisdiction to decide the claim. Therefore, we now turn to

[8] In *Cobb v. Schirmer Stevedoring Co.*, 2 BRBS 132 (1975), the Board did not cite or apply 20 C.F.R. '802.221(a) and counted the day of the claim=s rejection as day one in computing the time in which claimant could request modification. Consequently, employer=s reliance on *Cobb* for the proposition that Section 22 of the Longshore Act provides 364 days in which to seek modification is misplaced.

[9] The time computation rule of 20 C.F.R. '725.311(c) is virtually identical to the time computation rule followed by the federal courts, Fed. R. Civ. P. 6(a); Fed. R. App. P. 26(a), and by the Board. 20 C.F.R. '802.221(a).

the administrative law judge=s findings on the merits of entitlement.

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 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 entitlement. *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).

Employer contends that the administrative law judge erred in considering Dr. Forehand=s physical examination report a well-reasoned opinion that claimant=s total disability is due to pneumoconiosis pursuant to Section 718.204(c) because, employer asserts, Dr. Forehand did not explain Ahis determination that disability arose from a combination of coal dust exposure and cigarette smoking.@ Employer's Brief at 21.

We conclude that substantial evidence supports the administrative law judge=s finding that Dr. Forehand=s opinion was well-reasoned. Based on pulmonary function testing, Dr. Forehand diagnosed a Asignificant respiratory impairment@ characterized by Aairflow limitation.@ Director's Exhibit 61 at 2. Dr. Forehand explained that pneumoconiosis Aleads to small airways disease and airflow limitation,@ citing several medical research articles, and noted further that A[c]igarette smoking causes airflow limitation.@ Director's Exhibit 61 at 2 and n.1. Dr. Forehand concluded that A[claimant=s] respiratory impairment has arisen from a combination of coal dust exposure as a roof bolt operator for 25 years and from smoking cigarettes for 29 years and would prevent him from returning to his last coal mining job.@ Director's Exhibit 61 at 2. The administrative law judge made clear that he understood Dr. Forehand=s reasoning to be that Abecause both pneumoconiosis and cigarette smoke lead to the type of airflow limitation which [claimant] experiences, both his coal mine employment and his long term cigarette smoking are responsible for his pulmonary condition.@ Decision and Order at 8-9. When weighing Dr. Forehand=s opinion at Section 718.204(c), the administrative law judge again referred to Dr. Forehand=s Aobserv[ation] that both pneumoconiosis and tobacco smoke abuse produce the type of airflow obstruction present in [claimant=s] lungs,@ and found that A[b]ased on that observation and the objective medical evidence . . . Dr. Forehand reasonably concluded that pneumoconiosis was one of the two causes of [claimant=s] totally disabling pulmonary condition.@ Decision and Order at 27. On these facts, we conclude that substantial evidence supports the administrative law judge=s discretionary determination that Dr. Forehand=s opinion was well-reasoned. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997)(the administrative law judge weighs the evidence and makes credibility determinations).

Employer next contends that even if credible, Dr. Forehand=s opinion is legally

insufficient to establish that pneumoconiosis is Aa substantially contributing cause of the miner=s totally disabling respiratory or pulmonary impairment.@ 20 C.F.R. '718.204(c)(1). A miner is totally disabled due to pneumoconiosis if pneumoconiosis:

> is a substantially contributing cause of the miner=s totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a Asubstantially contributing cause@ of the miner=s disability if it:
>
> (i) Has a material adverse effect on the miner=s respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. '718.204(c)(1). The administrative law judge set forth these provisions in his decision. Decision and Order at 24.

We conclude that Dr. Forehand=s opinion is sufficient to establish that pneumoconiosis is a substantially contributing cause of claimant=s total disability. As noted, the administrative law judge read Dr. Forehand=s opinion as Aconclud[ing] that pneumoconiosis was one of the two causes of [claimant=s] totally disabling pulmonary condition.@ Decision and Order at 27. Such an opinion, expressed without any apparent equivocation, would appear to satisfy the requirement that pneumoconiosis have at least Aa material adverse effect@ on the miner=s pulmonary condition. Employer, however, argues that Dr. Forehand=s opinion is insufficient to establish that pneumoconiosis is a substantially contributing cause because A[t]he doctor has merely combined coal dust exposure with cigarette smoking and has made no effort to determine whether claimant would be equally disabled as a result of his cigarette smoking alone.@ Employer's Brief at 20. Implicit in employer=s argument is the erroneous assumption that a doctor=s opinion must specify relative contributions of coal dust exposure and cigarette smoking to establish that claimant=s total disability is due to pneumoconiosis. The Asubstantially contributing cause@ standard of revised Section 718.204(c) was not intended to alter the meaning of Atotal disability due to pneumoconiosis@ as previously determined in decisions by the various United States Courts of Appeals under Part 718, but rather was intended to codify the courts= decisions. 65 Fed. Reg. at 79946-47. Under the existing law of the Fourth Circuit, claimant is not required to establish relative degrees of causal contribution by pneumoconiosis and smoking to demonstrate that his total disability is due to pneumoconiosis. *See Robinson v. Pickands Mather & Co*., 914 F.2d 35, 38, 14 BLR 2-68, 2-76 (4th Cir. 1990)(holding that a claimant must prove that pneumoconiosis is at least a contributing cause of total disability). Pneumoconiosis must be a necessary condition of claimant=s disability in that it cannot play a merely *de minimis* role. *Dehue*

Coal Co. v. Ballard, 65 F.3d 1189, 1196 n.8, 19 BLR 2-304, 2-320 n.8 (4th Cir. 1995).[10]

Dr. Forehand=s opinion in this case does not suggest that pneumoconiosis plays a *de minimis* role in claimant=s disability. Rather, as the administrative law judge found, Dr. Forehand believes that Apneumoconiosis was one of the two causes of [claimant=s] totally disabling respiratory condition.@ Decision and Order at 27. We therefore hold that Dr. Forehand=s opinion is sufficient to establish that pneumoconiosis is a Asubstantially contributing cause@ of claimant=s total disability pursuant to Section 718.204(c)(1).[11]

Employer argues that the administrative law judge did not give valid reasons for according less weight to the contrary opinion of Dr. Castle, who concluded that claimant=s total disability is due solely to smoking. Employer asserts that substantial evidence does not support the administrative law judge=s finding that Dr. Castle selectively analyzed medical data, and contends that the administrative law judge substituted his judgment for that of the physician.

We hold that substantial evidence supports the administrative law judge=s credibility determination. The administrative law judge found that Dr. Castle=s reasoning was Aproblematic@ because, in his report, Dr. Castle identified the absence of a restrictive component in claimant=s impairment as a reason for concluding that pneumoconiosis did not contribute to the impairment, yet admitted in his deposition testimony that the lack of restriction did not mean that pneumoconiosis did not contribute to claimant=s impairment. Decision and Order at 26. Substantial evidence supports this permissible finding. *Compare* Director's Exhibit 69 at 13 *with* Employer's Exhibit 1 at 28-29; *Underwood*, 105 F.3d at 951, 21 BLR 2-31-32 (holding that an administrative law judge

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[10] Consequently, the revised regulation requires that the adverse effect of pneumoconiosis be Amaterial.@ 20 C.F.R. ' 718.204(c)(1)(i); 65 Fed. Reg. at 79946 (explaining that Amaterial@ was added to codify courts= holdings that evidence that pneumoconiosis makes only an insignificant contribution to total disability is insufficient).

[11] Employer contends that Dr. Forehand=s additional statement, that continued coal dust exposure would aggravate claimant=s impairment, is insufficient under Section 718.204(c)(1). Because the administrative law judge did not rely on this portion of Dr. Forehand=s opinion at Section 718.204(c), we need not address whether it is legally sufficient under Section 718.204(c)(1).

should consider an opinion=s reasoning). Additionally, the administrative law judge found that Dr. Castle downplayed pulmonary function studies that were interpreted as showing no reversibility after the administration of bronchodilator medication, when he identified impairment reversibility as a reason for excluding pneumoconiosis as a cause of claimant=s disability. Decision and Order at 26. Again, substantial evidence supports the administrative law judge=s finding. Director's Exhibit 61 (May 10, 1999 study); Director's Exhibit 69 (January 10, 2000 study). Additionally, the administrative law judge noted accurately that Dr. Castle did not address the results of a pulse oximetry test interpreted as demonstrating nocturnal hypoxemia and the need for home oxygen, Claimant's Exhibit 32, when Dr. Castle stated that claimant has no impairment in his blood oxygen transfer. Finally, the administrative law judge found, within his discretion, that Dr. Castle did not persuasively explain why the absence of a diffusion capacity impairment excluded pneumoconiosis as a causative factor, or why the absence of certain breath sounds meant that pneumoconiosis was not a cause of claimant=s total disability. *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997)(holding that an administrative law judge should consider Athe explanation of [the] opinions@). Based on the specific arguments raised by employer, 20 C.F.R. '802.211(b), we hold that the administrative law judge properly analyzed the reasoning of Dr. Castle=s opinion and permissibly gave it less weight because Dr. Castle did not persuasively explain his opinion and overlooked or downplayed data that was inconsistent with his conclusions. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76, *Underwood*, 105 F.3d at 951, 21 BLR 2-31-32.

Employer alleges that the administrative law judge failed to consider Dr. Castle=s superior qualifications in pulmonary medicine when weighing the medical opinions. Employer=s contention lacks merit. The administrative law judge specifically found that the Aprobative enhancement@ that Dr. Castle=s opinion would otherwise receive because of Ahis qualification as a pulmonary expert, [was] diminished by Dr. Castle=s selective reasoning.@ Decision and Order at 26. Because the administrative law judge considered the physicians= qualifications as required, *Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275; *Underwood*, 105 F.3d at 951, 21 BLR 2-31, we reject employer=s allegation of error.

Employer contends that the administrative law judge erred in finding that Dr. Branscomb=s 1997 opinion was not relevant to determining the cause of claimant=s total disability because Dr. Branscomb stated that claimant was not totally disabled. Dr. Branscomb=s 1997 opinion, generated during the original proceedings in claimant=s duplicate claim, stated that although claimant had pneumoconiosis, he had no impairment and thus was not totally disabled. Director's Exhibits 45, 47. Dr. Branscomb added that if he assumed the presence of an impairment, it was nondisabling and due to smoking. Director's Exhibit 45 at 6. The physicians of record now agree, as of 1999 and 2000

testing, that claimant has a totally disabling respiratory or pulmonary impairment. Director's Exhibits 61, 69; Employer's Exhibit 1. Claimant established a material change in conditions on the basis of this new evidence. Decision and Order at 11-13. Because the issue is claimant=s pulmonary condition as of the date of the hearing, *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Coffey v. Director, OWCP*, 5 BLR 1-404, 1-407 (1982), the administrative law judge reasonably found that Dr. Branscomb=s 1997 Aopinion that [claimant] is not disabled due to pneumoconiosis has no probative bearing on this particular issue, the cause of his present totally disabling pulmonary impairment.@ Decision and Order at 24. Therefore, we reject employer=s contention that the administrative law judge erred in his analysis of Dr. Branscomb=s opinion.

Finally, employer argues that the administrative law judge erred by not considering the relevance of the opinions of Drs. Ahmad, Hixon, and Thakkar. Employer contends that these opinions Areflect a disabling condition other than pneumoconiosis,@ namely, heart disease. Employer's Brief at 24. The administrative law judge considered the reports in question and found that they Afocused on [claimant=s] cardiac health problems, [and] offered no comments on the sources of [claimant=s] breathing problems.@ Decision and Order at 24. Substantial evidence supports this finding. Drs. Ahmad, Hixon, and Thakkar are cardiologists who examined and tested claimant to determine the cause of recurrent chest pains. Director's Exhibits 9-12; Claimant's Exhibit 35. The physicians diagnosed angina and recommended cardiac catheterization. Their reports contain no statement that claimant is disabled by heart disease, nor any opinion that heart disease or smoking are the causes of claimant=s current respiratory disability. Thus, contrary to employer=s contention, the administrative law judge did not overlook relevant evidence regarding the cause of claimant=s total disability. *See Hicks*, 138 F.3d at 535, 21 BLR at 2-339 (holding that the administrative law judge must consider all relevant evidence regarding the cause of disability). Consequently, we reject employer=s contention and affirm the administrative law judge=s finding pursuant to Section 718.204(c)(1), and the resulting award of benefits.[12]

[12] Claimant asserts that the administrative law judge overlooked CT scan evidence of complicated pneumoconiosis at Director's Exhibit 61. Claimant=s contention lacks merit, as the administrative law judge considered the CT scan evidence and found that it did not establish the existence of complicated pneumoconiosis. Decision and Order at 5 n.4.

Accordingly, the administrative law judge=s Determination of Timely Filing of Modification and Decision and Order--Award of Benefits are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge