BRB No. 01-0473 BLA

BRYANT HESS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	
	)	DATE ISSUED:
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Third Remand of Alexander Karst, Administrative Law Judge, United States Department of Labor.

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

Helen H. Cox (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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 Decision and Order on Third Remand (91-BLA-1088) of Administrative Law Judge Alexander Karst awarding benefits 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] This case is before the Board for the fourth time. Claimant filed a duplicate claim on July 17, 1990.[2] By Decision and Order dated May 4, 1992, Administrative Law Judge George A. Fath found that the evidence was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Accordingly, Judge Fath denied benefits. By Decision and Order dated December 28, 1993, the Board held, *inter alia*, that Judge Fath erred in weighing the evidence supportive of a finding that claimant established a material change in conditions against the contrary evidence and erred in holding that claimant was required to demonstrate a material change in conditions with respect to all elements of entitlement that he failed to establish in his earlier claim. *Hess v. Dominion Coal Corp.*, BRB No. 92-1702 BLA (Dec. 28, 1993) (unpublished). The Board, however, held that this error was harmless inasmuch as Judge Fath's finding that

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[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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

[2]The relevant procedural history of the instant case is as follows: Claimant initially filed a claim for benefits on December 15, 1983. Director's Exhibit 48. By Decision and Order dated February 29, 1988, Administrative Law Judge Gerald T. Hayes found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). *Id.* Judge Hayes further found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000). *Id.* Accordingly, Judge Hayes denied benefits. *Id.* There is no indication that claimant took any further action in regard to his 1983 claim.

Claimant filed a second claim on July 17, 1990. Director's Exhibit 1.

the medical evidence of record was insufficient to establish that claimant's total disability was due to pneumoconiosis could be affirmed. *Id.* The Board, therefore, affirmed Judge Fath's denial of benefits. *Id.* By Decision and Order dated September 30, 1994, the United States Court of Appeals for the Fourth Circuit held that the reasoning relied upon by the Board was insufficient to support a denial of benefits. *Hess v. Dominion Coal Corp.*, No. 94-1066 (4th Cir. Sept. 30, 1994) (unpublished). The Fourth Circuit, therefore, vacated the Board's Decision and Order and remanded the case to the Board for further review. *Id.*

By Order dated December 14, 1995, the Board vacated its December 28, 1993 Decision and Order and remanded the case for further consideration. *Hess v. Dominion Coal Corp.*, BRB No. 92-1702 BLA (Dec. 14, 1995) (Order) (unpublished).

Due to Judge Fath's unavailability, Administrative Law Judge Alexander Karst (the administrative law judge) reconsidered the claim on remand. In a Decision and Order on Remand dated September 30, 1996, the administrative law judge found that the evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). The administrative law judge, therefore, considered the merits of claimant's 1990 claim. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.204(a)(1) and (a)(4) (2000). The administrative law judge also found that claimant was entitled to a presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b)(2000). The administrative law judge further found that the evidence was sufficient to establish that claimant was totally disabled pursuant to 20 C.F.R. §718.204(c)(1) and (c)(4) (2000) and that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, the administrative law judge awarded benefits. By Decision and Order dated November 25, 1997, the Board affirmed the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1) (2000), 718.203(b) (2000) and 718.204(b) and (c) (2000). *Hess v. Dominion Coal Corp.*, BRB No. 97-0279 BLA (Nov. 25, 1997) (unpublished). The Board, therefore, affirmed the administrative law judge's award of benefits. *Id.*

Employer subsequently filed a motion for reconsideration. By Decision and Order on Motion for Reconsideration dated July 21, 1998, the Board vacated the administrative law judge's finding that the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and remanded the case for further consideration. *Hess v. Dominion Coal Corp.*, BRB No. 97-0279 BLA (July 21, 1998) (Order on Recon.) (McGranery, J. dissenting) (unpublished). The Board also vacated the administrative law judge's findings pursuant to 20 C.F.R. §718.204(b) and (c) (2000). *Id.*

On remand for the second time, the administrative law judge found that the evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309

(2000). In his consideration of the merits of claimant's 1990 claim, the administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4) (2000). The administrative law judge also found that claimant was entitled to a presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b)(2000). The administrative law judge further found that the evidence was sufficient to establish that claimant was totally disabled pursuant to 20 C.F.R. §718.204(c) (2000) and that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, the administrative law judge awarded benefits. By Decision and Order dated September 29, 2000, the Board affirmed the administrative law judge's denial of employer's motion to reopen the record on remand. *Hess v. Dominion Coal Corp.*, BRB No. 99-0758 BLA (Sept. 29, 2000) (unpublished). The Board also affirmed the administrative law judge's finding that the medical opinion evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4) (2000). However, because the administrative law judge did not adequately discuss all of the contrary probative evidence, the Board vacated the administrative law judge's finding that the newly submitted evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000) and remanded the case for further consideration. *Id*. In light of this holding, the Board also vacated the administrative law judge's finding that the evidence was sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). *Id.* The Board further noted that, subsequent to the issuance of the administrative law judge's 1999 Decision and Order on Remand, the Fourth Circuit held that although Section 718.202(a) enumerates four distinct methods of establishing pneumoconiosis, all types of relevant evidence must be weighed together to determine whether a miner suffers from the disease. *Id*; s*ee Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The Board, therefore, remanded the case to the administrative law judge for his weighing of all the evidence together under Section 718.202(a) in accordance with *Compton*. *Id.* The Board also vacated the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b) (2000). *Id.*

On remand for the third time, the administrative law judge found that the evidence was sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000) and was, therefore, sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). The administrative law judge, therefore, considered the merits of claimant's 1990 claim. The administrative law judge found that the evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that claimant was entitled to a presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge further found that the evidence was sufficient to establish that claimant's total disability was due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits. On appeal, employer argues that the administrative law judge erred in finding the evidence sufficient to establish a material change in conditions pursuant to 20

C.F.R. §725.309 (2000). Employer also argues that the administrative law judge erred in finding the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Employer also contends that the administrative law judge erred in finding the evidence sufficient to establish that claimant's total disability was due to pneumoconiosis. The Director, Office of Workers' Compensation Programs, has filed a limited response, noting his belief that the instant case is not affected by any of the revisions to the regulations. Claimant has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer argues that the administrative law judge erred in finding the evidence sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).[3] The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that in assessing whether a material change in conditions has been established, an administrative law judge must consider all of the new evidence, favorable and unfavorable, and determine whether the miner has proven at least one of the elements of entitlement previously adjudicated against him. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1995), *cert. denied*, 117 S.Ct. 763 (1997). Claimant's prior 1983 claim was denied because claimant failed to establish the existence of pneumoconiosis or that he was totally disabled. Director's Exhibit 48. Consequently, in order to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000), the newly submitted evidence must support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability pursuant to 20 C.F.R. §718.204(b).[4]

[3]Although Section 725.309 has been revised, these revisions only apply to claims filed after January 19, 2001.

[4]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now set out at 20 C.F.R. §718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

Employer argues that the administrative law judge erred in finding the newly submitted pulmonary function study evidence sufficient to support a finding of total disability. We agree. In its most recent decision, the Board instructed the administrative law judge to weigh the August 22, 1990 and December 21, 1990 studies, along with the contrary probative evidence, under Section 718.204(c) (2000). The Board specifically instructed the administrative law judge to:

> weigh the evidence he credited as demonstrating total respiratory disability, *i.e.*, the qualifying pulmonary function study and the medical opinion of Dr. Robinette, against all the contrary probative evidence, **including the August and December 1990 pulmonary function studies**, the non-qualifying blood gas studies and the contrary medical opinions.

Hess v. Dominion Coal Corp., BRB No. 99-0758 BLA, slip op. at 6 (Sept. 29, 2000) (unpublished) (emphasis added).

Instead of complying with the Board's instructions to weigh claimant's August 22, 1990 and December 21, 1990 pulmonary function studies, the administrative law judge found that these studies should not be accepted as evidence. In making this determination, the administrative law judge discredited Dr. Renn's assessment regarding the usefulness of these studies. In his assessment of claimant's August 22, 1990 and December 21, 1990 pulmonary function studies, Dr. Renn stated that:

> As an individual cannot artificially increase his ventilatory function the numerical values represent ventilatory function less than that of which he would be capable were the study to have been performed with complete cooperative effort and optimal technical quality.

Employer's Exhibits 23, 24.

The administrative law judge additionally erred in discrediting Dr. Renn's assessment of claimant's August 22, 1990 and December 21, 1990 pulmonary function studies because Dr. Renn "did not review any other type of medical data." Decision and Order on Third Remand at 3. Having reviewed the tracings from the actual studies, Dr. Renn was able to provide an assessment as to the usefulness of the values obtained therefrom. The administrative law judge has not explained how Dr. Renn's review of additional evidence would assist him in evaluating the reliability and usefulness of the values obtained from claimant's August 22, 1990 and December 21, 1990 pulmonary function studies.

The administrative law judge also erred to the extent that he found that the opinions

and Drs. Tuteur and Castle supported a finding that the values from claimant's August 22, 1990 and December 22, 1990 pulmonary function studies "should not be accepted as evidence." Decision and Order on Third Remand at 2. Dr. Tuteur noted that the results of claimant's August 22, 1990 and December 21, 1990 pulmonary function studies could not be "validated as an assessment of maximum function." Employer's Exhibit 26. Although Dr. Tuteur subsequently concluded that the presence or absence of pulmonary impairment could not be assessed because of the invalidity of most of the physiologic data base, Dr. Tuteur did not contradict his earlier statement that claimant's pulmonary function studies were not valid indicators of claimant's "maximum function." *Id.*

Similarly, Dr. Castle opined that claimant's August 22, 1990 and December 1, 1990 pulmonary function studies were invalid and should not be accepted as evidence because of claimant's less than maximal effort. Employer's Exhibit 28. However, Dr. Castle subsequently relied upon the results of claimant's December 21, 1990 study to illustrate that there was no substantial or significant change in claimant's pulmonary function values from 1985 until 1990, thereby evidencing his belief that the December 21, 1990 study was sufficient to demonstrate at least claimant's minimal lung function. *Id.*

As the Board has noted on two occasions previously, a pulmonary function that has been invalidated for poor effort and cooperation may be weighed by the administrative law judge as contrary probative evidence since the non-qualifying high scores would have been higher with sufficient effort. *See Hess v. Dominion Coal Corp.*, BRB No. 99-0758 BLA (Sept. 29, 2000) (unpublished); *Hess v. Dominion Coal Corp.*, BRB No. 97-0279 BLA (July 21, 1998) (Order on Recon.) (McGranery, J. dissenting) (unpublished). Because the administrative law judge did not weigh claimant's August 22, 1990 and December 21, 1990 pulmonary function studies, along with the contrary probative evidence, as instructed in the Board's prior decisions, we vacate the administrative law judge's finding that the newly submitted evidence is sufficient to establish total disability and remand the case for the administrative law judge to specifically weigh the contrary probative evidence under 20 C.F.R. §718.204(b).[5] *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on*

[5]Employer argues that the administrative law judge erred in finding that the medical opinion evidence was sufficient to establish total disability. The Board has affirmed the administrative law judge's finding that the medical opinion evidence is sufficient to establish total disability. *See Hess v. Dominion Coal Corp.*, BRB No. 99-0758 BLA (Sept. 29, 2000) (unpublished). Our previous holding on this issue constitutes the law of the case and governs our determination. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984). Consequently, we reaffirm the administrative law judge's finding that the medical opinion evidence is sufficient to establish total disability. *See* 20 C.F.R. §718.204(b)(2)(iv). However, employer's contention that the administrative law judge failed to explain the weight that he accorded the

recon. 9 BLR 1-236 (1987) (*en banc*).

In light of our holding to vacate the administrative law judge's finding that the newly submitted evidence is sufficient to establish total disability, we also vacate the administrative law judge's finding that the evidence is sufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).

Employer contends that the administrative law judge erred in finding the evidence sufficient to establish the existence of pneumoconiosis. Employer argues that the administrative law judge erred in his consideration of the x-ray evidence. In his consideration of whether the x-ray evidence was sufficient to establish the existence of pneumoconiosis, the administrative law judge focused upon the interpretations of claimant's three most recent x-rays taken on August 22, 1990, December 21, 1990 and May 23, 1991. Because these three x-rays were obtained within a nine month period, the administrative law judge found that these x-rays were "entitled to equal weight based on their age." Decision and Order on Third Remand at 3.

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non-qualifying arterial blood gas study evidence has merit. On remand, the administrative law judge must explain the weight accorded to the arterial blood gas study evidence.

Claimant's August 22, 1990 and December 21, 1990 x-rays were uniformly interpreted as negative for pneumoconiosis.[6] Director's Exhibits 13-15, 44, 46; Employer's Exhibits 2, 5, 6, 19-22. Dr. Robinette, a B reader, interpreted claimant's May 23, 1991 x-ray as positive for pneumoconiosis.[7] Claimant's Exhibits 1, 2.

In his consideration of whether the x-ray evidence was sufficient to establish the

[6]Drs. Greene, Spitz, Wiot and Shipley, each dually qualified as a B reader and Board-certified radiologist, interpreted claimant's August 22, 1990 x-ray as negative for pneumoconiosis. Director's Exhibits 13, 44, 46; Employer's Exhibit 10. Dr. Dumic, a Board-certified radiologist, also interpreted claimant's August 22, 1990 x-ray as negative for pneumoconiosis. Director's Exhibits 14, 15.

Drs. Wheeler and Scott, each dually qualified as a B reader and Board-certified radiologist, interpreted claimant's December 21, 1990 x-ray as negative for pneumoconiosis. Employer's Exhibits 19-22. Three B readers, Drs. Hippensteel, Castle and Stewart, also interpreted claimant's December 21, 1990 x-ray as negative for pneumoconiosis. Employer's Exhibits 2, 5, 6.

[7]Dr. Epling interpreted claimant's May 23, 1991 x-ray as revealing bibasalar atelectasis. Claimant's Exhibit 3. The administrative law judge noted that there was no indication that Dr. Epling interpreted claimant's May 23, 1991 x-ray for the presence or absence of pneumoconiosis. *See* 1999 Decision and Order on Remand at 7. Dr. Epling's radiological qualifications are not found in the record.

existence of pneumoconiosis, the administrative law judge stated that:

> The qualifications of the readers range from board-certified radiologist (BCR) to B-readers (B) to dually qualified readers (BCR/B). A comparison of the qualifications with the readings do not show any correlation. While only one B diagnosed pneumoconiosis, and the other readers did not, the record also shows that a BCR and a B both detected atelectasis, while the other readers did not. Two BCR/Bs found hyperinflation of the lungs, while four BCR/Bs and one B found completely negative lungs. Therefore, I find no basis to accord greater weight to any reading based on the qualifications of the reader.
>
> As to the quality of the films, the August 22, 1990 and December 21, 1990 x-rays were rated as quality 1 through 3. The May 23, 1991 x-ray was read as only quality 1. Again, I give additional weight to the May 23, 1991 x-ray because its quality 1 rating is undisputed. While the other x-rays were rated quality 1 by one reader each, there were three quality 3 ratings of the August 22, 1990 x-ray, one quality 3 rating of the December 21, 1990 x-ray, and a suggestion by another reader of the December 21, 1990 x-ray that the x-ray be repeated.
>
> Thus, considering these factors, I find that the x-ray evidence is in equipoise. Two less than optimum quality x-rays were read as negative, while an optimum x-ray was read as positive. The x-ray evidence by itself is inconclusive. Therefore, I find that the x-ray evidence does not establish pneumoconiosis under §718.202(a)(1), I also find that it does not establish its absence.

Decision and Order on Third Remand at 3-4.

Employer argues that the administrative law judge erred in finding the x-ray evidence to be in "equipoise." We agree. Of the twelve interpretations of claimant's three most recent x-rays, only one is positive for pneumoconiosis. Although Dr. Robinette, a B reader, interpreted claimant's May 23, 1991 x-ray as positive for pneumoconiosis, numerous physicians dually qualified as B readers and Board-certified radiologists interpreted claimant's August 22, 1990 and December 21, 1990 x-ray as negative for pneumoconiosis. The administrative law judge's finding that the readings by the dually qualified physicians were not entitled to additional weight because they differed as to the presence of incidental findings, *i.e.*, atelectasis and hyperinflation, is not rational. These physicians all agreed that claimant's August 22, 1990 and December 21, 1990 x-rays were negative for pneumoconiosis, the relevant inquiry under Section 718.202(a)(1). The administrative law judge also erred in according less weight to the interpretations of claimant's August 22, 1990

and December 21, 1990 x-rays because physicians differed as to the quality of these films. No physician opined that either the August 22, 1990 film or the September 21, 1990 film was not suitable for interpretation for the presence or absence of pneumoconiosis. Consequently, we vacate the administrative law judge's finding that the x-ray evidence was in "equipoise" and remand the case for further consideration.

Employer also contends that the administrative law judge erred in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis. In finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis, the administrative law judge accorded Dr. Robinette's opinion the greatest weight. The administrative law judge explained that:

> [Dr. Robinette] interpreted a quality 1 x-ray, obtained after the Claimant had ceased his coal mine employment. As the x-ray evidence is in equipoise and Dr. Robinette is a B reader, his finding of pneumoconiosis based on a positive x-ray is well-reasoned. He explained that the x-ray reading was compatible with his findings on the lung capacity and pulmonary function studies, as well as the physical examination. Dr. Robinette was the only physician in the instant claim to review a valid pulmonary function study, and the only physician in the record to review a disability-qualifying study. His opinion is thus better supported, as Drs. Garzon, Abernathy, Endres-Bercher, Castle and Tuteur had only outdated or invalid studies to consider. For these reasons, I find that the Claimant has established pneumoconiosis by the medical opinion evidence under §718.202(a)(4).

Decision and Order on Third Remand at 5.

Employer argues that the administrative law judge erred in crediting Dr. Robinette's opinion. The administrative law judge credited Dr. Robinette's finding of pneumoconiosis because it was based upon his positive interpretation of a quality 1 x-ray and the results of a valid non-qualifying pulmonary function study. In light of our decision to vacate the administrative law judge's findings that the pulmonary function study evidence is sufficient to establish total disability and the administrative law judge's finding that the x-ray evidence is in "equipoise," we also vacate the administrative law judge's finding that Dr. Robinette's opinion that claimant suffered from pneumoconiosis is entitled to the greatest weight.[8]

[8]The administrative law judge also failed to explain why Dr. Robinette's reliance upon a positive x-ray entitled his opinion to additional weight, given the administrative law judge's own determination that the x-ray evidence of record was insufficient to support a finding of pneumoconiosis.

The administrative law judge also erred in crediting Dr. Robinette's finding of pneumoconiosis because he relied upon a qualifying pulmonary function study. The Board has recognized that pulmonary function studies are relevant only to the issue of total disability and not the existence of pneumoconiosis. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-28 (1987).

The administrative law judge also failed to explain why Dr. Robinette's finding that claimant suffered from pneumoconiosis was "better supported" than the contrary opinions of Drs. Abernathy, Endres-Bercher, Tuteur and Castle.[9] Consequently, we vacate the administrative law judge's finding that medical opinion evidence is sufficient to establish the existence of pneumoconiosis.

If, on remand, the administrative law judge again finds the evidence sufficient to establish the existence of pneumoconiosis pursuant to either 20 C.F.R. §718.202(a)(1) or (a)(4), he must then weigh all of the evidence relevant to Section 718.202(a)(1)-(4) together in determining whether claimant has established the existence of pneumoconiosis. *See Compton*, *supra*.

Employer finally contends that the administrative law judge erred in finding the evidence sufficient to establish that claimant's total disability was due to pneumoconiosis. In according the greatest weight to Dr. Robinette's opinion that claimant's total disability is due to pneumoconiosis, the administrative law judge did not adequately address the contrary opinions of Drs. Abernathy, Castle, Endres-Bercher and Tuteur, each of whom provided non-coal mine employment related causes for claimant's respiratory problems. Moreover, the administrative law judge did not address whether the evidence was sufficient to establish that claimant's total disability was due to pneumoconiosis pursuant to the revised disability causation standard set out at 20 C.F.R. §718.204(c). Consequently, we vacate the administrative law judge's finding that the evidence is sufficient to establish that claimant's total disability was due to pneumoconiosis. On remand, should the administrative law judge find the evidence sufficient to establish the existence of pneumoconiosis pursuant to 20

[9]Employer also notes that the administrative law judge failed to address the superior qualifications of the physicians who found that claimant did not suffer from pneumoconiosis. The Fourth Circuit has held that experts' respective qualifications are important indicators of the reliability of their opinions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1998). Drs. Tuteur and Castle are Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibits 8, 27. Dr. Endres-Bercher is Board-certified in Internal Medicine. Employer's Exhibit 3. Dr. Robinette's qualifications are not found in the record.

C.F.R. §718.202(a) and that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b), he must then determine whether the evidence is sufficient to establish that claimant's total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge