BRB No. 09-0489 BLA

WALTER L. LOCKHART	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
U.S. STEEL CORPORATION	)	DATE ISSUED: 03/12/2010
	)	
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 of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (07-BLA-5429) of Administrative Law Judge Linda S. Chapman (the administrative law judge) awarding benefits on a subsequent claim[1] filed pursuant to the provisions of Title IV of the Federal Coal Mine

[1] Claimant filed his first claim on June 19, 1973. Director's Exhibit 1. It was finally denied by a claims examiner on November 24, 1980 because the evidence did not establish that claimant was totally disabled by pneumoconiosis. *Id*. Claimant filed his second claim on December 1, 1987. Director's Exhibit 2. On May 15, 1992, Administrative Law Judge Charles P. Rippey issued a Decision and Order denying

Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). The administrative law judge credited claimant with 39 years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the new evidence established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Consequently, the administrative law judge found that the new evidence established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). On the merits, the administrative law judge found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4) and 718.203(b). The administrative law judge also found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the x-ray evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). Employer also challenges the administrative law judge's finding that the medical opinion evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Further, employer challenges the administrative law judge's finding that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv). Lastly, employer challenges the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief in this appeal.

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benefits because the evidence did not establish that claimant was totally disabled and, thus, it did not establish a material change in conditions. *Id*. Claimant filed his third claim on April 12, 1994. Director's Exhibit 3. On May 26, 1999, Administrative Law Judge Samuel J. Smith issued a Decision and Order denying benefits because the evidence did not establish that claimant was totally disabled from a respiratory impairment and, thus, it did not establish a material change in conditions. *Id*. By Order dated August 25, 1999, the Board dismissed claimant's appeal as untimely. *Lockhart v. U.S. Steel Mining Co.*, BRB No. 99-1084 BLA (Aug. 25, 1999)(unpub. order). Claimant filed his fourth claim on August 28, 2000. Director's Exhibit 4. On June 25, 2002, Administrative Law Judge Daniel F. Solomon issued a Decision and Order denying benefits because the evidence did not establish that claimant was totally disabled by pneumoconiosis. *Id*. The Board affirmed Judge Solomon's denial of benefits. *Lockhart v. U.S. Steel Mining Co.*, BRB No. 02-0685 BLA (May 8, 2003)(unpub.). Claimant filed his sixth claim on May 24, 2004, which was finally denied by a claims examiner on January 19, 2005 because the evidence did not establish that claimant was totally disabled by pneumoconiosis. Director's Exhibit 5. Claimant filed this claim on April 5, 2006. Director's Exhibit 7.

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.[2] 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 in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish 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 (1989).

Employer initially contends that the administrative law judge erred in finding that the x-ray evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). The administrative law judge considered the old and new x-ray evidence of record. Specifically, the administrative law judge stated that "[a]s noted by [Administrative Law Judge Daniel F. Solomon in his June 25, 2002 Decision and Order], of the seventeen interpretations of ten x-rays done between 1973 and 2001, only three were interpreted as negative for pneumoconiosis." Decision and Order at 13. With regard to the new x-ray evidence, the administrative law judge considered nine interpretations of five x-rays dated May 3, 2006,[3] October 26, 2006, January 17, 2007, January 15, 2008, and January 16, 2008. Dr. Forehand read the May 3, 2006 x-ray as positive for pneumoconiosis, Director's Exhibit 15, while Dr. Al-Asbahi read this x-ray as negative, Employer's Exhibit 4. Dr. Hippensteel read the October 26, 2006 x-ray as positive for pneumoconiosis. Employer's Exhibit 1. Dr. Rasmussen read the January 17, 2007 x-ray as positive for pneumoconiosis. Claimant's Exhibit 2. Dr. Al-Asbahi also read the January 17, 2007 x-ray. Employer's Exhibit 5. Although Dr. Al-Asbahi found pleural abnormalities consistent with pneumoconiosis, the doctor also found no parenchymal abnormalities consistent with pneumoconiosis. *Id*. Dr. Rasmussen read the January 15, 2008 x-ray as positive for pneumoconiosis, Claimant's Exhibit 1, while Dr. Smith read this x-ray as negative, Employer's Exhibit 6. Dr. DePonte read the January 16, 2008 x-ray as positive for pneumoconiosis, Claimant's Exhibit 6, while Dr. Zaldivar read this x-ray as negative, Employer's Exhibit 2.

[2] The record indicates that claimant was last employed in the coal mining industry in West Virginia. Director's Exhibits 1-5, 8, 9. Accordingly, we will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

[3] Dr. Gaziano, a B reader, read the May 3, 2006 x-ray for quality only. Director's Exhibit 15.

As required by Section 718.202(a)(1), the administrative law judge considered the B reader and Board-certified radiologist status of the readers of the x-rays. 20 C.F.R. §718.202(a)(1). In so doing, the administrative law judge gave greater weight to the physicians who are B readers and/or Board-certified radiologists. The administrative law judge initially found that the May 3, 2006 x-ray was positive for pneumoconiosis, based on Dr. Forehand's superior qualifications as a B reader. The administrative law judge next found that the October 26, 2006 x-ray was positive for pneumoconiosis, based on Dr. Hippensteel's uncontradicted interpretation. The administrative law judge then found that the January 17, 2007 x-ray was positive for pneumoconiosis, based on Dr. Rasmussen's superior qualifications as a B reader. Further, the administrative law judge noted that Dr. Rasmussen found that the January 15, 2008 showed pneumoconiosis. Lastly, the administrative law judge found that the January 16, 2008 x-ray was positive for pneumoconiosis, based on Dr. DePonte's superior qualifications as a dually-qualified radiologist. Hence, after finding that a preponderance of the new x-ray evidence established the existence of pneumoconiosis, the administrative law judge concluded that a preponderance of all the x-ray evidence established the existence of pneumoconiosis at Section 718.202(a)(1).

Employer argues that the administrative law judge erred in weighing the x-ray evidence. Specifically, employer asserts that the administrative law judge erred in finding that Dr. Forehand's reading of the May 3, 2006 x-ray and Dr. DePonte's reading of the January 16, 2008 x-ray were credible. Employer states that "Dr. Al-Asbahi and Dr. Dominic Gaziano, the Director's re-reader for quality only, both found the presence of atalectasis at the lung bases, which are the markings Dr. Forehand has (mis)interpreted as pneumoconiosis." Employer's Brief at 7. Employer also states that "[Dr. DePonte] has read the films as showing a profusion of 2/2, a far greater profusion than any other reader has given to chest x-rays made in the course of this claim, aside from Dr. Forehand's reading of his film, which was shown to be incorrect by the re-reading of the film by a dually qualified (sic) radiologist, as well as by the opinions of the employer's examining pulmonologists." *Id*. Further, employer states that "in the only reading of his [January 15, 2008] film in the record, Dr. Hippensteel, a B-reader and Board certified (sic) pulmonary specialist[,] found that this film 'shows an increase in s type irregular opacities in lower lung zones with no upper lung zone involvement,'" and that "'[t]his fits the category of s/s, 1/2, which does not look like coal workers' pneumoconiosis as a cause for these increased marking.'" *Id*.

The pertinent regulations at Sections 718.102(b) and 718.202(a)(1) permit an administrative law judge to find the existence of pneumoconiosis established based on a chest x-ray that is classified as Category 1/0 or greater. *See* 20 C.F.R. §§718.102, 718.202(a)(1); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1 (1999)(*en banc*). Further, the Board has held that comments in an x-ray report that undermine the credibility of a positive ILO classification are relevant to the issue of the existence of pneumoconiosis at

20 C.F.R. §718.202(a)(1), *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-37 (1991)(*en banc*), whereas comments in an x-ray report that address the source of pneumoconiosis diagnosed by x-ray are not relevant to the issue of the existence of pneumoconiosis, but should be considered at 20 C.F.R. §718.203. *Cranor*, 22 BLR at 1-5-6. Here, in finding that the new x-ray evidence established the existence of pneumoconiosis at Section 718.202(a)(1), the administrative law judge relied on the x-ray readings of Drs. Forehand and DePonte. Dr. Forehand classified the profusions of the small opacities on the May 3, 2006 x-ray as 2/3 and Dr. DePonte classified the profusions of the small opacities on the January 16, 2008 x-ray as 2/2. While Dr. Forehand did not provide any comments on his x-ray report, Dr. DePonte noted "[emphysema] in upper lung zones" in his x-ray report. However, Dr. DePonte also indicated that his classification of the small opacities was based on the middle and lower zones of the lungs. Consequently, neither Dr. Forehand nor Dr. DePonte made comments that undermined the credibility of their positive ILO classifications. Thus, we reject employer's assertion that the administrative law judge erred in finding that Dr. Forehand's reading of the May 3, 2006 x-ray and Dr. DePonte's reading of the January 16, 2008 x-ray were credible. The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985).

Employer also argues that the administrative law judge should have given greater weight to Dr. Zaldivar's negative reading of the January 16, 2008 x-ray because Dr. Zaldivar is a dually-qualified radiologist. Contrary to employer's assertion, the record does not indicate that Dr. Zaldivar is dually qualified as a B reader and a Board-certified radiologist. Rather, the record indicates that Dr. Zaldivar is only a B reader. Thus, the administrative law judge acted within her discretion in according greater weight to Dr. DePonte's positive reading of the January 16, 2008 x-ray than to Drs. Zaldivar's negative reading of this x-ray, based on Dr. DePonte's superior qualifications as a dually-qualified radiologist. *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Consequently, we reject employer's assertion that the administrative law judge should have given greater weight to Dr. Zaldivar's negative reading of the January 16, 2008 x-ray because of his qualifications.

Employer additionally argues that the administrative law judge should have given greater weight to Dr. Smith's negative reading of the January 15, 2008 x-ray because Dr. Smith is a dually-qualified radiologist. Contrary to employer's assertion, the record does not indicate that Dr. Smith is dually qualified as a B reader and a Board-certified radiologist. Nevertheless, the record indicates that Dr. Smith is a B reader. As discussed, *supra*, the administrative law judge noted that Dr. Rasmussen, a B reader, read the January 15, 2008 x-ray as positive for pneumoconiosis. The administrative law judge also found that Dr. Smith read the January 16, 2008 x-ray as negative for

pneumoconiosis. 2009 Decision and Order at 4, 13-14. However, contrary to the administrative law judge's finding, Dr. Smith read the January 15, 2008 x-ray as negative for pneumoconiosis. *See* Employer's Exhibit 6; *Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985). Thus, the administrative law judge erred in weighing January 15, 2008 x-ray.

Employer further argues that the administrative law judge should have given greater weight to Dr. Al-Asbahi's negative readings of the May 3, 2006 and January 17, 2007 x-rays because Dr. Al-Asbahi is dually qualified as a B reader and a Board-certified radiologist. As noted above, Dr. Forehand read the May 3, 2006 x-ray as positive for pneumoconiosis and Dr. Rasmussen read the January 17, 2007 x-ray as positive for pneumoconiosis, while Dr. Al-Asbahi read both of these x-rays as negative. The administrative law judge gave greater weight to Dr. Forehand's positive reading of the May 3, 2006 x-ray and Dr. Rasmussen's positive reading of the January 17, 2007 x-ray because they are B readers. However, as employer asserts, the record indicates that Dr. Al-Asbahi is a B reader, even though it does not indicate that the doctor is also a Board-certified radiologist. Thus, because the administrative law judge did not explain why she found that the radiological qualifications of Drs. Forehand and Rasmussen are superior to those of Dr. Al-Asbahi, *Wojtowicz*, 12 BLR at 1-165, we hold that the administrative law judge erred in finding that Dr. Forehand's positive reading of the May 3, 2006 x-ray and Dr. Rasmussen's positive reading of the January 17, 2007 x-ray outweighed Dr. Al-Asbahi's negative readings of both of these x-rays.

In view of the foregoing, we vacate the administrative law judge's finding that the x-ray evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and remand the case for further consideration of all the x-ray evidence thereunder.

Employer next contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Specifically, employer argues that claimant failed to carry his burden of proving the existence of pneumoconiosis because the medical opinion evidence is in equipoise regarding this issue. The administrative law judge considered the treatment notes of Dr. Patel and the reports of Drs. Forehand, Rasmussen, Hippensteel, and Zaldivar. In his treatment notes, Dr. Patel indicated that claimant was treated for chronic obstructive pulmonary disease, pneumoconiosis, hypoxemia, and pulmonary fibrosis. Claimant's Exhibit 3. In a May 3, 2006 report, Dr. Forehand opined that claimant has coal workers' pneumoconiosis. Director's Exhibit 15. In a January 17, 2007 report, Dr. Rasmussen opined that claimant has coal workers' pneumoconiosis and a disabling chronic lung disease related to coal dust exposure. Claimant's Exhibit 2. Similarly, in a January 29, 2008 report, Dr. Rasmussen opined that claimant has both clinical and legal pneumoconiosis. Claimant's Exhibit 1. By contrast, in a report dated February 13, 2007, Dr. Hippensteel opined that claimant does not have medical or legal pneumoconiosis.

Employer's Exhibit 1. Lastly, in a February 4, 2008 report, Dr. Zaldivar opined that claimant does not have coal workers' pneumoconiosis from a medical or legal standpoint, but that he has emphysema and asthma related to smoking. Employer's Exhibit 2.

The administrative law judge stated that "[she] adopt[ed] by reference Judge Solomon's description of the medical opinions submitted in connection with [claimant's] previous claims," that "[t]hese opinions were mixed," and that "[she] agree[d] with Judge Solomon that "the more recent reports that were before him did not support a finding of pneumoconiosis." 2009 Decision and Order at 14. Regarding the new medical opinion evidence, the administrative law judge noted the findings of Drs. Forehand and Rasmussen with regard to the issue of pneumoconiosis.[4] The administrative law judge next found "Dr. Patel's conclusions to be somewhat equivocal, as [Dr. Patel] found the only objective test, the CT scan, to show findings 'probably' due to pneumoconiosis." *Id*. The administrative law judge then found that Dr. Hippensteel's opinion regarding the issue of pneumoconiosis was not reasoned by stating:

> Although he read [claimant's] x-ray as positive for pneumoconiosis, Dr. Hippensteel stated, without further explanation, that the x-ray did not "look like" coal workers' pneumoconiosis as a cause for the increased markings.

[4] In considering Dr. Forehand's opinion at 20 C.F.R. §718.202(a)(4), the administrative law judge stated: "Dr. Forehand, who examined [claimant] twice, concluded that he had pneumoconiosis, based on his x-ray results, his occupational history, his physical examination, his chest x-ray, and his arterial blood gas study. Dr. Forehand has examined [claimant] on many occasions in connection with [his] claims, the first time in October 1997. He observed the changes in [claimant's] x-ray, and the progressive effect on his physiological testing. By May 2006, [claimant's] x-ray showed changes consistent with pneumoconiosis, and testing showed a gas exchange abnormality, a pattern of impairment that led him to conclude that [claimant's] exposure to coal mine dust played a significant role in his respiratory impairment." 2009 Decision and Order at 14.

With respect to Dr. Rasmussen's opinion, the administrative law judge stated: "Dr. Rasmussen, who also examined [claimant] and administered testing, concluded that his x-ray showed pneumoconiosis, and that he had a moderate loss of lung function, reflected by his reduced diffusing capacity and moderate impairment in oxygen transfer during light moderate exercise. He concluded that [claimant] had COPD/emphysema that was caused in part by his coal mine dust exposure. When Dr. Rasmussen saw [claimant] a year earlier, his x-ray also showed pneumoconiosis, and he had marked impairment in oxygen transfer during exercise. He concluded that [claimant's] coal mine dust exposure contributed significantly to his impairment in oxygen transfer." *Id*.

> Although Dr. Hippensteel stated that [claimant] more recently had evidence of bullae in his upper lung zones, which are not associated with pneumoconiosis absent complicated pneumoconiosis, he did not explain his conclusion that the persistent abnormalities in [claimant's] lung bases were not due to pneumoconiosis or coal dust exposure.

Id. at 14-15. The administrative law judge additionally stated:

> Nor did Dr. Hippensteel address [claimant's] impaired diffusing capacity, or his arterial hypoxemia on exercise, the bases for Dr. Forehand's and Dr. Rasmussen's conclusions that [claimant] has a respiratory disability as a result of his exposure to coal mine dust, other than to state, without further explanation, that this hypoxemia was due to an abnormal cardiac response, rather than intrinsic pulmonary disease.

Id. at 15.

Further, in finding that Dr. Zaldivar's opinion regarding the issue of pneumoconiosis was not reasoned, the administrative law judge stated:

> [Dr. Zaldivar] concluded that [claimant] had asthma, as reflected in part by his normal or near normal diffusing capacity and his normal exercise blood gases. However, [Dr. Zaldivar][5] did not explain how this conclusion was consistent with Dr. Rasmussen's findings of reduced diffusing capacity and marked impairment in oxygen transfer during exercise in January 2007, Dr. Forehand's findings of arterial hypoxemia in May 2006, or Dr. Hippensteel's findings of hypoxemia during exercise testing. I find that Dr. Zaldivar's opinions are not consistent with the objective medical evidence, and I do not accord them significant weight.

Id.

Therefore, after stating that she relied on the opinions of Drs. Forehand and Rasmussen over the contrary opinions of Drs. Hippensteel and Zaldivar, the administrative law judge concluded that claimant established the existence of pneumoconiosis at Section 718.202(a)(4).

[5] The administrative law judge referred to Dr. Castle instead of Dr. Zaldivar in this sentence. However, based on the context of the entire paragraph, it is clear that the administrative law judge made a typographical error in referring to Dr. Castle, rather than Dr. Zaldivar, in this sentence. 2009 Decision and Order at 15.

The Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In this case, while the administrative law judge explained why she discounted the reports of Drs. Hippensteel and Zaldivar, opining that claimant does not have pneumoconiosis, she did not explain why she accepted the reports of Drs. Forehand and Rasmussen, opining that claimant has pneumoconiosis. *Wojtowicz*, 12 BLR at 1-165. The administrative law judge's uncritical acceptance of the opinions of Drs. Forehand and Rasmussen, regarding the x-ray evidence and the etiology of claimant's respiratory impairment, based on diffusing capacity and exercise blood gas study results, contrasted with her treatment of the contrary opinions of Drs. Hippensteel and Zaldivar. Thus, because the administrative law judge's finding that the opinions of Drs. Hippensteel and Zaldivar were outweighed by the contrary opinions of Drs. Forehand and Rasmussen cannot be affirmed, *Hughes v. Clinchfield Coal Co*., 21 BLR 1-134, 1-139-40 (1999)(*en banc*), we vacate the administrative law judge's finding that the medical opinion evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) and remand the case for further consideration of the medical opinion evidence in accordance with the APA.

On remand, when considering the medical opinion evidence, the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See generally Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

Furthermore, on remand, the administrative law judge must weigh all types of relevant evidence together at 20 C.F.R. §718.202(a)(1)-(4) to determine whether the evidence is sufficient to establish the existence of pneumoconiosis in accordance with *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), if she finds the existence of pneumoconiosis established at either 20 C.F.R. §718.202(a)(1) or (a)(4).

Employer further contends that the administrative law judge erred in finding that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv). After she incorporated Judge Solomon's description of the medical evidence in the prior claim, the administrative law judge agreed with Judge Solomon that the previously submitted medical evidence showed that claimant has a totally disabling respiratory impairment. The administrative law judge then found that, "[i]n connection with the current claim, all four physicians who addressed this issue concluded that from a

respiratory standpoint, [claimant] cannot return to his previous coal mine employment." 2009 Decision and Order at 15.

Employer asserts that the administrative law judge erred in relying on the disability opinions of Drs. Forehand, Rasmussen, Hippensteel, and Zaldivar because they were based on an inaccurate work history. Specifically, employer's argues that claimant's last coal mine work was as a dispatcher, and not a roof bolter. Employer maintains that "[the administrative law judge] appears not to have considered the entirety of the evidence concerning the claimant's relevant coal mine work, citing only the claimant's incorrect assertion at the most recent hearing that his last job was as a roof bolter." Employer's Brief at 11. Employer's assertion has merit.

As noted above, the administrative law judge found that Drs. Forehand, Rasmussen, Hippensteel, and Zaldivar concluded that, from a respiratory standpoint, claimant cannot return to his previous coal mine employment. In his May 3, 2006 report, after noting that claimant's last coal mine work as a roof bolter required him to carry supplies, set timbers and jacks, rock dust, shovel, and pull cables, Dr. Forehand opined that claimant has a respiratory impairment that would interfere with his ability to work, thereby making him totally disabled. Director's Exhibit 15. In his January 17, 2007 report, Dr. Rasmussen noted that claimant's last job was as a roof bolter and, thus, that he did considerable heavy manual labor. Claimant's Exhibit 2. Dr. Rasmussen further opined that claimant has a disabling chronic lung disease. *Id*. In his subsequent January 15, 2008 report, Dr. Rasmussen noted that claimant worked underground as a cutting machine operator, shuttle car operator, scoop operator, continuous miner operator, mainline and section motorman, roof bolter, and trackman. Claimant's Exhibit 1. Dr. Rasmussen also noted that claimant's last job required him to clean roadways with various pieces of equipment, set timbers, pull and hang heavy cables, and shovel. *Id*. Dr. Rasmussen therefore found that "[claimant] did considerable heavy and some very heavy manual labor." *Id*. Further, Dr. Rasmussen concluded that "[claimant] does not retain the pulmonary capacity to perform his regular coal mine job, which required heavy and some very heavy manual labor." *Id*. In his February 13, 2007 report, Dr. Hippensteel noted that "[claimant] said that his last job was underground as a roof bolter for the last two years," and opined that "[claimant] has enough impairment as a whole man, including his age, to be unable to go back to his previous job in the mines." Employer's Exhibit 1. In a History & Physical Examination dated January 17, 2008, Dr. Zaldivar noted that claimant last worked in the mines for one year as a general inside laborer. Employer's Exhibit 2. Dr. Zaldivar further noted that claimant was a shuttle car operator, pinning machine operator, loader operator, motorman, and dispatcher before his last job as a general inside laborer. *Id*. In a subsequent report dated February 4, 2008, Dr. Zaldivar opined that "[f]rom a pulmonary standpoint as of the time of the last examination at age 78, [claimant] is incapable of performing his usual coal mining work

or work requiring similar exertion because as he stated his work required heavy manual labor." *Id*.

In her Decision and Order, the administrative law judge considered claimant's hearing testimony regarding his jobs in the mines, and found that "[h]is last full year was spent roof bolting (Tr. 23)." 2009 Decision and Order at 4. However, as employer argues, in his June 25, 2002 Decision and Order, Judge Solomon found that "[claimant's] last usual coal mining job was as a dispatcher for [employer], which included occasional episodes of moderate heavy manual labor when he performed roof bolting duties."[6] 2002 Decision and Order at 17. Further, based on Dr. Vasudevan's October 25, 2000 opinion that claimant has no impairment and Dr. Castle's July 30, 2001 opinion that claimant retains the respiratory capacity to perform his last coal mining job and, thus, that he is not totally disabled, Judge Solomon found that the preponderance of the medical opinion evidence developed since the prior denial of benefits did not establish that claimant was totally disabled from a respiratory impairment at 20 C.F.R. §718.204(b)(2)(iv). *Id*. at 18. Rather, Judge Solomon found that the arterial blood gas study evidence developed since the prior denial of benefits established total disability at 20 C.F.R. §718.204(b)(2)(ii), thereby establishing a material change in conditions at 20 C.F.R. §725.309. *Id*. at 16, 18.

Moreover, in his May 26, 1999 Decision and Order, Administrative Law Judge Samuel J. Smith considered the exertional requirements of claimant's last coal mining job by stating:

> Claimant appeared credible and testified at the hearing that he last worked as a dispatcher. He described his job duties to include directing traffic in the mines. *Hearing Transcript* (*Tr*.) at 13. [Claimant] stated that, during the week and on weekends when work was slow, he would haul equipment

[6] In considering claimant's coal mine employment, Judge Solomon noted that claimant held jobs as a dispatcher, roof bolter, motorman, trackman, diesel locomotive operator and outside laborer, and that he worked for employer until the mine closed on December 19, 1986. Judge Solomon also noted that claimant testified that he was a dispatcher for about the last fifteen years of his coal mine employment and that he did some work as a roof bolter on weekends from August 11, 1986 to December 19, 1986. Judge Solomon further stated: "Claimant described his dispatching job as the easiest job he ever had at the mines (Tr. 16-17). The job was located outside the mine at the drift mouth, but [c]laimant testified that he was exposed to coal dust (Tr. 17). As a dispatcher, [c]laimant was responsible for the direction of all the traffic in the mines (DX 26). When [c]laimant performed roof bolting duties on weekends, [c]laimant's job required him to haul equipment and work the track, motor and machinery; basically anything they wanted done (*Id*.)." 2002 Decision and Order at 17.

> and lift motors and machinery in the mine. *Tr*. at 14. Based upon this record, it is determined that [c]laimant performed a light level of manual labor with occasional episodes of [a] moderate level of manual labor.

1999 Decision and Order at 7.

As discussed, *supra*, the APA, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz*, 12 BLR 1-165. In this case, the administrative law judge did not explain why she found that claimant's recent testimony that his last coal mine work was as a dispatcher is more credible than his previous testimony regarding this issue. *Wojtowicz*, 12 BLR 1-165; *see also Addison v. Director, OWCP*, 11 BLR 1-68 (1988). Consequently, we vacate the administrative law judge's finding that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv) and remand the case for further consideration of the medical opinion evidence in accordance with the APA.

On remand, when considering the medical opinion evidence at Section 718.204(b)(2)(iv), the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See generally Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

Further, if reached on remand, the administrative law judge must weigh together all of the evidence of disability at 20 C.F.R. §718.204(b)(2)(i)-(iv), like and unlike, to determine whether the evidence establishes total disability at 20 C.F.R. §718.204(b). *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*).

Finally, employer contends that the administrative law judge erred in finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). The administrative law judge considered the opinions of Drs. Forehand, Rasmussen, Hippensteel, and Zaldivar. During a deposition dated October 1, 2007, Dr. Forehand opined that claimant is totally disabled, at least in part, because of his coal mine employment.[7] Employer's Exhibit 1 (Dr. Forehand's Deposition at 45-46). Dr.

[7] In his report dated May 3, 2006, after opining that claimant is totally disabled, Dr. Forehand addressed the causes of the impairment by stating that "coal dust exposure has affected claimant's lungs more than cigarette smoking." Director's Exhibit 15.

Rasmussen opined that claimant's clinical and legal pneumoconiosis are materially contributing causes of his disabling lung disease. Claimant's Exhibit 1. Dr. Hippensteel opined that claimant's impairments are not caused by his prior coal dust exposure. Employer's Exhibit 1. Dr. Zaldivar did not render an opinion with regard to the issue of disability causation. Employer's Exhibit 2. In weighing the medical opinion evidence at Section 718.204(c), the administrative law judge stated:

> I rely on the opinions of Dr. Forehand, who has examined [claimant] on several occasions, and explained why. They are also supported by Dr. Rasmussen, who. (sic) I credit their conclusions over those of Dr. Zaldivar and Dr. Hippensteel, who have failed to address relevant information in the record, and otherwise have offered conclusions without rationale or support.

2009 Decision and Order at 15.

Because we herein vacate the administrative law judge's findings that the evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), (4) and that the evidence established total disability at 20 C.F.R. §718.204(b), we also vacate the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) and remand the case for further consideration of all the evidence in accordance with the APA.

In sum, we vacate the administrative law judge's finding that the evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (4). Further, because we vacate the administrative law judge's finding that the evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (4), we also vacate the administrative law judge's finding that the evidence established that the pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b). We additionally vacate the administrative law judge's finding that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv). Further, we vacate the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). On remand, the administrative law judge must consider all of the relevant evidence on these issues in accordance with the APA.

At the outset, however, the administrative law judge must determine whether the new evidence establishes a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309 by establishing the element of entitlement that was previously decided against claimant, namely, that he is totally disabled due to pneumoconiosis.[8]

[8] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative

White v. New White Coal Co., 23 BLR 1-1 (2004). If the administrative law judge finds that the new evidence establishes a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, then she must consider the evidence on the merits at 20 C.F.R. Part 718.

Accordingly, the administrative law judge's Decision and Order is vacated and the case is remanded to the administrative law judge 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

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law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2); *see generally Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).