BRB No. 09-0494 BLA

CURTIS T. HUFF	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	DATE ISSUED: 03/16/2010
	)	
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 Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

W. William Prochot (Greenberg Traurig, LLP), Washington, D.C., for employer.

Michelle S. Gerdano (M. Patricia Smith, Solicitor of Labor; Rae Ellen Frank James, 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 Decision and Order Award of Benefits (06-BLA-5421) of Administrative Law Judge Daniel F. Solomon 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). The administrative law judge credited

claimant with at least thirty years of coal mine employment,[1] as stipulated, and adjudicated this claim, filed on April 11, 2005, pursuant to the regulatory provisions at 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of both clinical and legal pneumoconiosis[2] arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b), and found that claimant is totally disabled by a respiratory or pulmonary impairment that is due to legal pneumoconiosis, pursuant to 20 C.F.R. §718.204(b)(2), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's findings of clinical and legal pneumoconiosis at Section 718.202(a)(1), (4), and disability causation at Section 718.204(c). Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a limited response, urging the Board to reject employer's argument that the administrative law judge erred in considering the comments in the preamble to the revised regulations when evaluating the medical opinions pursuant to Section 718.202(a)(4). Employer filed a reply brief, reiterating its contentions.[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 rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30

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[1] The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibit 3; Hearing Transcript at 5-6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] A finding of either clinical pneumoconiosis or legal pneumoconiosis is sufficient to support a finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Clinical pneumoconiosis is defined as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[3] The administrative law judge's finding that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b) is unchallenged on appeal. This finding is, therefore, affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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 a finding of 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).

Evaluating the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge noted, correctly, that the record contains six readings of two x-rays, taken on April 26, 2005 and August 15, 2005, by Drs. Westerfield, Burton, Alexander, Wiot, and Repsher.[4] Decision and Order at 5, 7. Initially considering the readers' qualifications, the administrative law judge found that "Dr. Wiot is the best qualified" because in addition to being a Board-certified radiologist and B reader, he is a professor of radiology, he helped formulate the standards for the ILO classification scheme used to classify the existence of pneumoconiosis, and is "one of the original 'C' readers, a designation assigned to only a few radiologists who have eminent familiarity with the ILO classification scheme." Decision and Order at 7. The administrative law judge further found that Drs. Burton and Alexander are "dually qualified" as Board-certified radiologists and B readers. Decision and Order at 7.

Turning first to the later, August 15, 2005 x-ray, the administrative law judge noted, correctly, that Dr. Repsher, a B reader, interpreted this x-ray as negative for pneumoconiosis, while Dr. Alexander, a Board-certified radiologist and B reader, interpreted this x-ray as positive for pneumoconiosis. Decision and Order at 7; Director's Exhibit 14 at 8; Claimant's Exhibit 1. The administrative law judge permissibly found this x-ray to be positive, based on Dr. Alexander's superior qualifications.[5] *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999)(*en banc*).

Reviewing the readings of the earlier x-ray, taken on April 26, 2005, the administrative law judge noted that Dr. Alexander read this x-ray as positive for pneumoconiosis, while Dr. Wiot, a Board-certified radiologist and B reader, Dr.

[4] Dr. Barrett, a Board-certified radiologist and B reader, interpreted the April 26, 2005 x-ray for film quality only. Director's Exhibit 13 at 1.

[5] Employer does not challenge the administrative law judge's weighing of the August 15, 2005 x-ray. This finding is therefore affirmed. *See Skrack*, 6 BLR at 1-711.

Westerfield, a B reader,[6] and Dr. Burton, a Board-certified radiologist,[7] interpreted the April 26, 2005 x-ray as negative for pneumoconiosis.[8] Decision and Order at 8; Claimant's Exhibit 5; Employer's Exhibit 2; Director's Exhibit 12 at 1, 2. Evaluating the conflicting readings of the April 26, 2005 x-ray, the administrative law judge found:

> As noted above, the majority find that it is negative. However, I find that as Dr. Alexander is credited to the second reading and as the second x-ray was taken four months after the first, and is more consistent with the rest of the x-ray record, I find that the readings of the first are in equipoise.

Decision and Order at 8. The administrative law judge further explained:

> I realize that four months is probably not enough time to apply the rule that later evidence is assumed [better] because pneumoconiosis is a progressive and irreversible disease, and therefore it may be appropriate to accord greater weight to the most recent evidence of record, especially where a significant amount of time separates newer evidence from that evidence which is older. (citations omitted). However, Dr. Alexander noted that mild inflation was evident. Dr. Repsher marked the box for other abnormalities but failed to state what they might have been. Therefore, I find that Dr. Alexander's reading of the second x-ray is better documented. I also note that he marked that the first showed a possible defect and that a second x-ray was needed. CX5. When Dr. Wiot read the first, he noted no other abnormalities. EX2. However, Dr. Burton also noted the abnormalities, (DX12-2, 12-3). Therefore, I find that as Dr. Alexander's

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[6] Employer asserts that Dr. Westerfield is also a Board-certified radiologist, and cites to a source outside the record. Employer's Brief at 3 n.1. The record indicates that Dr. Westerfield is a B reader, but not a Board-certified radiologist. Director's Exhibit 12 at 1; Claimant's Exhibit 6 at 23.

[7] The administrative law judge alternately indicated that Dr. Burton is a Board-certified radiologist, Decision and Order at 5, and that he is a dually-qualified Board-certified radiologist and B reader. Decision and Order at 7.

[8] Dr. Burton interpreted the April 26, 2005 x-ray as revealing "left basilar atelectasis and/or infiltrate versus parenchymal scarring" and "probable parenchymal scarring at the right base versus recurrent atelectasis and/or infiltrate." Director's Exhibit 12-2. The administrative law judge permissibly considered this reading to be negative for the existence of pneumoconiosis. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216 (1984).

> reading of the second x-ray is better documented, it is more consistent with the entire x-ray evidence and is therefore more probative. Therefore, I find that pneumoconiosis has been established by x-ray.

Decision and Order at 8.

We agree with employer that the administrative law judge erred in finding that the readings of the April 26, 2005 x-ray are in equipoise, and in according greater weight to the August 15, 2005 positive x-ray to conclude that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

First, having permissibly relied on the superior qualifications of Dr. Alexander to resolve the conflicting readings of the August 15, 2005 x-ray, the administrative law judge acted inconsistently when he declined credit Dr. Wiot's negative reading of the April 26, 2005 x-ray, over Dr. Alexander's positive reading of the same x-ray, despite having found that "Dr. Wiot is the best qualified" x-ray reader of record. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114-15 (2006)(*en banc*)(McGranery and Hall, JJ., concurring and dissenting); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003); *Worhach v. Director, OWCP*, 7 BLR 1-105, 1-108 (1993); Decision and Order at 7-8. In addition, as employer asserts, substantial evidence does not support the administrative law judge's finding that Dr. Alexander's positive reading of the August 15, 2005 x-ray is "more consistent with the entire x-ray evidence," in light of the administrative law judge's findings that four of the six x-ray readings of record are negative for pneumoconiosis, including the "majority" of the readings of the April 26, 2005 x-ray. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 5, 8. Nor has the administrative law judge adequately explained how Dr. Alexander's notation that the August 15, 2005 x-ray also shows evidence of hyperinflation renders his conclusion *as to the existence of pneumoconiosis* "better documented" than the other x-ray readings of record. *See Harris*, 23 BLR at 1-114-15; *Kiser v. L&J Equip. Co.*, 23 BLR 1-246, 1-258-59 (2006); *Cranor*, 22 BLR at 1-5-6. Further, the administrative law judge's reliance on the "later evidence rule," to credit Dr. Alexander's positive reading of the August 15, 2005 x-ray is misplaced, as the x-rays of record were taken only four months apart, and as Dr. Alexander's 1/1 positive x-ray reading in April 2005, decreased to a 1/0 positive reading in August 2005, and thus did not indicate a progression of the disease. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319, 17 BLR 2-77, 2-85 (6th Cir. 1993); *Chaffin*, 22 BLR at 1-302. Finally, the administrative law judge did not independently evaluate the April 26, 2005 x-ray. Instead, the administrative law judge resolved the conflict in the readings of the April 26, 2005 x-ray, based on his resolution of the conflicting readings of the August 15, 2005 x-ray.

For the foregoing reasons, we vacate the administrative law judge's evaluation of the x-ray evidence pursuant to Section 718.202(a)(1). On remand, the administrative law judge must independently evaluate the April 26, 2005 x-ray, and resolve the conflicting readings thereof without reliance on the readings of the August 15, 2005 x-ray. In so doing, the administrative law judge must accurately determine,[9] and consistently refer to, Dr. Burton's credentials. After reweighing the April 26, 2005 x-ray, the administrative law judge must determine whether the x-ray evidence, as a whole, establishes the existence of clinical pneumoconiosis pursuant to Section 718.202(a)(1).[10]

Employer next asserts that the administrative law judge erred in crediting the medical opinion of Dr. Simpao over the contrary opinions of Drs. Fino and Repsher on the issue of legal pneumoconiosis at Section 718.202(a)(4). Employer argues that the administrative law judge shifted the burden of proof to employer in violation of the regulations and the provisions of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), 30 U.S.C. §932(a), and failed to subject the opinion of claimant's physician to proper scrutiny. Employer's Brief at 18. Employer further contends that the administrative law judge erred in considering the comments in the preamble to the revised regulations when evaluating the medical opinions pursuant to Section 718.202(a)(4), and has relieved claimant of his burden of proving a relationship between his pulmonary disease and coal dust exposure. Employer's Brief at 14-18. Some of employer's arguments have merit.

In evaluating the conflicting medical opinions, the administrative law judge summarized the physicians' findings, noting that Dr. Simpao, a general practitioner and

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[9] Employer identifies Dr. Burton as a Board-certified radiologist in its Evidence Summary Form, and the administrative law judge recites employer's identification of Dr. Burton as such in the telephone conference call between the parties on November 25, 2008. *See* Employer's Evidence Summary Form dated April 16, 2008 at 2; Transcript of November 25, 2008 Telephone Conference Call at 6. However, the record indicates only that Dr. Burton is a staff radiologist at Muhlenberg Community Hospital. Director's Exhibit 12 at 2; Claimant's Exhibit 6 at 23.

[10] We reject, however, employer's contention that the administrative law judge should have weighed the computerized tomography (CT) scan evidence with the x-ray evidence. While the administrative law judge must consider the CT scan evidence of record, it is properly considered at Section 718.107(b), not at Section 718.202(a)(1). *See* 20 C.F.R. §718.202(a)(1); *Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006)(*en banc*)(Boggs, J., concurring); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting).

claimant's treating physician, performed the Department of Labor's pulmonary evaluation on April 26, 2005.[11] Director's Exhibit 12 at 21. Dr. Simpao stated that claimant is totally disabled due to a moderate restrictive and severe obstructive respiratory impairment. Dr. Simpao opined that claimant's impairment was due to both coal dust and smoking, but that it was not possible to measure the relative influence of each factor on claimant's condition. Director's Exhibit 12 at 24. Dr. Simpao reiterated his opinion in his December 13, 2007 deposition. Claimant's Exhibit 6 at 11-12, 30-31. Dr. Repsher, who is Board-certified in Internal Medicine and Pulmonary Disease, examined claimant and opined that he has severe chronic obstructive pulmonary disease (COPD), most likely due to smoking. Director's Exhibit 14 at 5. Dr. Repsher relied, in part, on six medical studies to support his opinion, which he attached to his report, but did not discuss in his opinion. *Id.* at 6. Dr. Fino, who is also Board-certified in Internal Medicine and Pulmonary Disease, reviewed the opinions of Drs. Simpao and Repsher. Employer's Exhibit 1. Dr. Fino stated that claimant's totally disabling respiratory impairment is due to smoking. Employer's Exhibit 1 at 8. Dr. Fino relied, in part, on medical studies that he summarized and explained in his opinion. *Id.* at 4-7.

The administrative law judge credited Dr. Simpao's "testimony that Claimant was a susceptible host for pneumoconiosis after 30 years of mining" as well as his "testimony that the FVC of 60 establishes restrictive disease and that smoking does not typically cause a restrictive airways disease," without explanation, in violation of the APA. 5

[11] Employer asserts that "it may have been inappropriate for Dr. Simpao to perform the [Department of Labor] examination," Employer's Brief at 4 n.2, because the regulations provide that "the miner may not select any physician who has examined or provided medical treatment to the miner within the twelve months preceding the date of the miner's application." 20 C.F.R. §725.406(b). Dr. Simpao testified that he treated the miner from 1971 through May 2005, a month after claimant filed his claim in April 2005. Claimant's Exhibit 6 at 21-22. Claimant's Department of Labor [DOL] examination was performed by Dr. Simpao on April 26, 2005. Director's Exhibit 12 at 21. We decline to address the propriety of Dr. Simpao's performance of the DOL evaluation since it was not raised before the administrative law judge. *See Kurcaba v. Consolidation Coal Co.*, 9 BLR 1-73, 1-75 (1986); *Lyon v. Pittsburgh & Midway Coal Co.*, 7 BLR 1-199, 1-201 (1984). Moreover, the comments to the regulations state that:

> The Department believes that a physician's examination or treatment of the miner prior to the one-year period preceding the miner's application should not disqualify that physician from performing the complete pulmonary evaluation.

65 Fed. Reg. 79983 (Dec. 20, 2000).

U.S.C. §557(c)(3)(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order at 13. In addition, the administrative law judge acknowledged that Dr. Simpao was not as well-qualified as Drs. Repsher and Fino, but concluded that "the determination that the Claimant has both a restrictive and an obstructive component to his respiratory profile is more reasonable tha[n] that he only has an obstructive disease." Decision and Order at 13.

As employer contends, however, in accepting Dr. Simpao's opinion, the administrative law judge did not consider Dr. Simpao's additional testimony that a reduced FVC of 60 could be caused by a purely obstructive impairment, or by obesity, and that lung volume and diffusing capacity studies, which he did not perform, could better indicate whether the impairment included a restrictive component, or was purely obstructive. Employer's Brief at 18; *see* Claimant's Exhibit 6 at 13-14, 25-27. The administrative law judge also failed to consider that Dr. Repsher performed pulmonary function testing, including lung volume and diffusing capacity studies, which he interpreted as revealing a purely obstructive impairment, and Dr. Fino reviewed the pulmonary function studies performed by both Drs. Simpao and Repsher, and concurred with Dr. Repsher that the studies revealed a purely obstructive impairment. Employer's Brief at 18; Director's Exhibit 14 at 4; Employer's Exhibit 1 at 1, 2. Thus, the administrative law judge has not considered all relevant evidence, and has not adequately explained how Dr. Simpao's interpretation of the pulmonary function study results as showing a restrictive impairment, indicative of coal dust-related disease, was "more reasonable" than the opinions of Drs. Repsher and Fino, and sufficient to meet claimant's burden of proof at Section 718.202(a)(4). *See* 30 U.S.C. §923(b); 5 U.S.C. §557(c)(3)(a); *Wojtowicz*, 12 BLR at 1-165; Decision and Order at 13. Rather, the administrative law judge appears to have impermissibly substituted his own opinion for that of a physician. *See Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003); *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987).

Employer further asserts that the administrative law judge erred in accepting Dr. Simpao's opinion, that both coal dust and smoking combined to cause claimant's impairment, because it "closely approximates the regulatory considerations expressed by [the] Department of Labor when rendering the regulations." Decision and Order at 13; Employer's Brief at 18-19. Employer contends that, "'consistency with the regulations is hardly a reason to credit Dr. Simpao's opinion . . . since [t]he regulations do not provide reasoning or support for a medical opinion.'" Employer's Reply Brief at 5, *quoting Penrod v. Peabody Coal Co.*, BRB No. 08-0609 BLA (June 26, 2009)(unpub.). We agree with employer that it is the duty of the administrative law judge to consider whether Dr. Simpao's diagnosis of legal pneumoconiosis is reasoned and documented, taking into consideration the objective evidence, underlying documentation, and rationale provided by Dr. Simpao in support of his opinion. *See Eastover Mining Co. v. Williams*,

338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985); Employer's Brief at 18-19; Employer's Reply Brief at 5.

For the foregoing reasons, we vacate the administrative law judge's findings pursuant to Section 718.202(a)(4), and remand this case for further consideration. On remand, the administrative law judge is cautioned not to provide his own interpretation of the medical data, but is instructed to reassess the conflicting medical opinions of record and provide a thorough analysis and explanation of his credibility determinations at Section 718.202(a)(4).[12] *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *see also Wetherill v. Director, OWCP*, 812 F.2d 376, 382, 9 BLR

[12] Citing to 65 Fed. Reg. 79940 (Dec. 20, 2000), the administrative law judge additionally noted that the preamble to the amended regulations recognized that "smokers who mine have an additive risk for developing significant obstruction," and that "none of the literature presented by either Drs. Repsher or Fino actually discusses the relationship of smoking to mining." Decision and Order at 12. It is not clear, however, why the administrative law judge considered it significant that the medical literature relied upon by Drs. Repsher and Fino did not address the additive risks of smoking and mining. The administrative law judge further found that the Leigh study, relied upon by Dr. Fino, bears "no relationship to the facts of this case, which involves both restrictive and obstructive components." Decision and Order at 12. However, whether this case involves both restrictive and obstructive components is also unclear. Only Dr. Simpao diagnosed a restrictive component to claimant's impairment, and we have vacated the administrative law judge's crediting of Dr. Simpao for the reasons set forth above. Moreover, while, contrary to employer's contention, the administrative law judge may rely on the preamble for guidance as to the interpretation of the regulations promulgated by the Department of Labor, *see Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-281 n.7 (7th Cir. 2001); *J.O.* [*O'Bush*] *v. Helen Mining Co.*, --- BLR --- , BRB No. 08-0671 BLA (June 24, 2009), slip op. at 8; *see also Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 638, --- BLR --- (6th Cir. 2009), he may not provide his own interpretation of the medical data. *See Wetherill v. Director, OWCP*, 812 F.2d 376, 382, 9 BLR 2-239, 2-247 (7th Cir. 1987); *Kiser v. L&J Equip. Co.*, 23 BLR 1-246, 1-258-59 (2006); *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987). The administrative law judge further erred in discounting the opinions of Drs. Repsher and Fino because the medical literature upon which they relied is not recent, when there is no evidence of record to establish that the studies have been superceded by more recent research. *See Wetherill*, 812 F.2d at 382, 9 BLR at 2-247; *Kiser*, 23 BLR at 1-258-59; *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5-6 (1999)(*en banc*); *Marcum*, 11 BLR at 1-24; Decision and Order at 12.

2-239, 2-247 (7th Cir. 1987); *Kiser*, 23 BLR at 1-253; *Cranor*, 22 BLR at 1-5-6; *Marcum*, 11 BLR at 1-24.

Lastly, employer argues that the administrative law judge erred in finding that claimant established that he is totally disabled due to legal pneumoconiosis pursuant to Section 718.204(c). Because the administrative law judge relied upon his findings on the issue of legal pneumoconiosis in assessing the weight to be accorded to the conflicting medical opinions on the issue of disability causation, we also vacate his findings at Section 718.204(c) for a reevaluation and weighing of the evidence thereunder on remand, if reached.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge