BRB No. 11-0532 BLA

KENNETH R. HARDIN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SMC COAL TERMINAL COMPANY, PIER SIX TERMINAL COMPANY, ZEI RESOURCES	)	
	)	
and	)	
	)	
SAFECO INSURANCE COMPANY OF NORTH AMERICA	)	DATE ISSUED: 05/10/2012
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Christine L. Kirby, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer/carrier.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2006-BLA-6015) of Administrative Law Judge Christine L. Kirby rendered on a living miner's claim filed on August 18, 2004, pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*))(the Act).[1] The administrative law judge credited claimant with twenty-one years of coal mine employment, consistent with the parties' stipulation, and adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that, while the evidence failed to establish the existence of clinical pneumoconiosis, it established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b)(2)(ii), (c).[2] Accordingly, the administrative law judge awarded benefits on the claim.

On appeal, employer challenges the administrative law judge's evaluation of the evidence regarding the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4), total respiratory disability pursuant to Section 718.204(b), and disability causation pursuant to Section 718.204(c). Additionally, employer challenges the administrative law judge's use of the preamble to the regulations, and asserts that she failed to accord equal scrutiny to the medical opinions of record. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[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

[1] The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant case, as this claim was filed before January 1, 2005. Director's Exhibit 2.

[2] The administrative law judge further found that, in establishing the existence of legal pneumoconiosis, i.e., a chronic respiratory impairment related to coal mine employment, claimant satisfied the element of causality, i.e., that the pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(a). *See Kiser v. L & J Equipment Co.*, 23 BLR 1-246, 1-259 n.18 (2006); Decision and Order at 21.

[3] We affirm, as unchallenged by the parties on appeal, the administrative law judge's finding that the claim was timely filed pursuant to 20 C.F.R. §725.308. Decision and Order at 6; *see Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that he is totally disabled and that his disability is due to pneumoconiosis. *See* 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. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(en banc).

Legal Pneumoconiosis

Initially, employer asserts that the administrative law judge "inappropriately relied on assertions made in the preamble to the [revised] regulations in analyzing the evidence in this claim." Employer's Brief at 9. Specifically, employer asserts that the administrative law judge erred in assigning "substantive weight" to the preamble, in evaluating the medical opinion evidence in violation of 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). Employer's Brief at 9-10. We disagree.

The preamble to the revised regulations sets forth the resolution of questions of scientific fact relevant to the elements of entitlement by the Department of Labor (the Department), that a claimant must establish in order to secure an award of benefits.[5] *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 23 BLR 2-18 (7th Cir. 2004). The administrative law judge, therefore, properly evaluated the medical opinion evidence in conjunction with the discussion of medical science by the Department, as set forth in the preamble, in assessing the credibility of the medical opinion evidence. *See J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117 (2009), *aff'd sub nom. Helen Mining Co. v. Director,*

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibits 7, 8.

[5] Specifically, relevant to this case, in the preamble to the revised regulations, the Department of Labor (the Department) recognized that coal mine dust exposure can be associated with significant deficits in lung function in the absence of clinical pneumoconiosis. 65 Fed. Reg. 79,941 (Dec. 20, 2000).

OWCP [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011). Accordingly, employer's argument is rejected.

Employer next challenges the administrative law judge's determination to credit Dr. Rasmussen's[6] diagnosis of legal pneumoconiosis, and her assignment of little weight to the contrary opinions of Drs. Repsher[7] and Dahhan, in finding legal pneumoconiosis established pursuant to Section 718.202(a)(4).[8] According to employer, as Dr. Rasmussen relied on "nothing other than the [arterial blood gas] findings," and "generalized" assumptions that "the effects of coal mine dust and cigarette smoke on the lungs cannot be distinguished," the administrative law judge erred in relying on Dr. Rasmussen's opinion. Employer also contends that the administrative law judge erred in relying on Dr. Rasmussen's opinion, because Dr. Rasmussen presumed that coal mine dust exposure is *always* a significant contributing factor to any pulmonary impairment. Employer's Brief at 6. We disagree.

[6] Dr. Rasmussen, who is Board-certified in internal medicine with a sub-specialty in pulmonary medicine, conducted claimant's 2005 pulmonary evaluation for the Department, as well as a supplemental examination in 2007, and diagnosed claimant with chronic obstructive pulmonary disease (COPD) and emphysema due to both coal mine dust exposure and cigarette smoking. Director's Exhibit 14; Claimant's Exhibit 2; Decision and Order at 10-14, 21.

[7] Dr. Repsher, who is Board-certified in internal medicine with a sub-specialty in pulmonary disease, conducted an initial medical evidence review in 2007, and a subsequent supplemental evidence review in 2009, and diagnosed claimant with hypertension, probably heart disease, obstructive sleep apnea, adult-onset asthma, and morbid obesity. He found no evidence of pneumoconiosis, and opined that claimant is capable of performing sustained continuous heavy exertion from a pulmonary and cardiac viewpoint, and that claimant's objective findings are due to obesity, cigarette smoking, and congestive heart failure. Employer's Exhibit 4; Decision and Order at 15-17.

[8] Dr. Dahhan, who is Board-certified in internal medicine with a sub-specialty in pulmonary disease, examined claimant in March and August of 2006 and found no evidence of pneumoconiosis or coal dust induced lung disease. By supplemental medical evidence review in 2009, Dr. Dahhan opined that claimant does not have legal pneumoconiosis, and that his "respiratory mechanisms are normal." Director's Exhibit 11. He opined that claimant's abnormal objective findings are due to obesity, sleep apnea, hypertension and low back pain, and are unrelated to coal mine employment. Director's Exhibit 11; Employer's Exhibits 2 at 2, 3; Decision and Order at 17, 20.

Whether the conclusions set forth in a medical opinion are reasoned and documented is a determination committed to the administrative law judge's discretion. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). In this instance, the administrative law judge permissibly credited Dr. Rasmussen's opinion, that claimant's emphysema is due to both smoking *and* coal mine employment, as both reasoned and documented. The administrative law judge found that the opinion was based on: physical examinations on two occasions, smoking and employment history, coal dust exposure history, chronic productive cough, airflow obstruction and reduced single breath carbon monoxide diffusing capacity (SBDLCO), pulmonary function studies, qualifying arterial blood gas studies results indicating "marked impairment in oxygen transfer during light exercise," and, finally, "references to extensive peer-reviewed medical literature." Decision and Order at 11; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Additionally, the administrative law judge found that Dr. Rasmussen explained how this data supported his diagnosis of legal pneumoconiosis. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); Decision and Order at 11-14; Director's Exhibit 14 at 8-9.

Further, contrary to employer's contention, the administrative law judge properly found that Dr. Rasmussen's statement, that he could not distinguish the effects of smoking from those of coal dust exposure, did not diminish the validity of his medical opinion. The Department and the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, have recognized that a physician's opinion, that the effects of smoking and coal dust exposure are indistinguishable, does not render that opinion unreasoned. *See* 65 Fed. Reg. 79,946 (Dec. 20, 2000); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 576, 22 BLR 2-107, 2-120-21 (6th Cir. 2000). Thus, in this case, the administrative law judge properly recognized that Dr. Rasmussen's diagnosis of emphysema due to both coal dust exposure *and* smoking constituted a diagnosis of legal pneumoconiosis, 65 Fed. Reg. 79,940-43 (Dec. 20, 2000); *Cornett*, 227 F.3d at 576-77, 22 BLR at 2-120-21; *see also Martin v. Ligon Preparation Co*., 400 F.3d 302, 306-08, 23 BLR 2-261, 2-284-87 (6th Cir. 2005); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989), and rationally assigned "full probative weight" to Dr. Rasmussen's opinion in finding the existence of legal pneumoconiosis established. Decision and Order at 14, 20.

Employer's remaining assertions, that the administrative law judge improperly evaluated the opinions of Drs. Repsher and Dahhan pursuant to Section 718.202(a)(4), are also meritless. An administrative law judge must examine the validity of a medical opinion in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-102; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988)(en banc); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). It is for the administrative law judge to properly examine whether a medical expert adequately explains how the underlying documentation and generalized

information derived from medical literature or scientific studies supports the medical conclusions reached regarding a particular claimant. *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark*, 12 BLR at 1-155; *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985).

In this case, the administrative law judge properly found that Dr. Repsher's opinion, that there is "no evidence of . . . legal . . . pneumoconiosis[,]" was inadequate because it was based on generalities, rather than on objective medical evidence. Decision and Order at 15-17; *see Jericol Mining Inc. v. Napier*, 301 F.3d 703, 713-14, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Clark*, 12 BLR at 1-149; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). She also properly discounted Dr. Repsher's opinion as conclusory, because his designation of obesity as the sole cause of the qualifying exercise values on arterial blood gas testing "[did] not explain how morbid obesity exclude[d] pneumoconiosis as a contributing cause [of] claimant's impaired oxygen transfer" demonstrated on testing. Decision and Order at 16-17; *see Barrett*, 478 F.3d at 355, 23 BLR at 2-482; *Clark*, 12 BLR at 1-155.

In addition, the administrative law judge properly discounted Dr. Repsher's suggestion that the opacities identified by Dr. DePonte on x-ray were caused by smoking, rather than pneumoconiosis. Specifically, she found Dr. Repsher's reasoning that 'Respiratory Bronchitis Interstitial Lung Disease' is the most common cause of s and t small opacities," to be inconsistent with Dr. DePonte's identification of "q" and "t" opacities in the lung. Further, as Dr. Repsher "[did] not [actually] diagnose claimant with 'Respiratory Bronchitis Interstitial Lung Disease,' or "offer an alternative cause [for the] 'q' opacities" seen by Dr. Deponte, the administrative law judge rationally found that Dr. Repsher's generalized conclusions, and "assertions with no support," failed to specifically focus on claimant's actual respiratory condition. Decision and Order at 17. Moreover, the administrative law judge determined, within her discretion, that Dr. Repsher's reference to "Respiratory Bronchitis Interstitial Lung Disease" as a "common cause" means that Dr. Repsher focused on generalities and failed to sufficiently explain why claimant's coal mine employment had been excluded as a factor affecting his emphysema. Decision and Order at 17; *see Barrett*, 478 F.3d at 355, 23 BLR at 2-482; *Martin*, 400 F.3d at 306-08, 23 BLR at 2-284-87; *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Cornett*, 227 F.3d at 576-77, 22 BLR at 2-121-22; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *see also Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Further, the administrative law judge properly discounted Dr. Repsher's opinion, that claimant does not have legal pneumoconiosis, because the physician stated that: "[e]xercise-induced hypoxemia in the absence of clinically significant [pulmonary function test] abnormalities NEVER impairs one's ability to exercise, even that of very heavy exercise at high-altitudes." Employer's Exhibit 4, Report of June 7, 2007 at 2,

accord Report of Feb. 3, 2009; Decision and Order at 16. We are not persuaded by employer's argument that Dr. Repsher was merely "commenting on the specific clinical picture in this case." Employer's Brief at 5. Because blood gas studies and pulmonary function studies measure different types of respiratory impairment, the administrative law judge reasonably inferred that Dr. Repsher believed that a diagnosis of a respiratory impairment should be excluded, unless pulmonary function tests demonstrate impairment.[9] *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Sweet v. Jeddo-Highland Coal Co.*, 7 BLR 1-659 (1985); *Whitaker v. Director, OWCP*, 6 BLR 1-983 (1984). This inference is contrary to the premise of the regulations, that claimant can have a respiratory impairment in the absence of abnormal pulmonary function or blood gas studies. *See Sweet*, 7 BLR at 1-660; *Whitaker*, 6 BLR at 1-987; *see also Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1981); *Walker v. Brown Badgett, Inc.*, 8 BLR 1-220 (1985); *Cunningham v. Pittsburg & Midway Coal Co.*, 7 BLR 1-93 (1984).

In light of the forgoing, the administrative law judge rationally identified various deficiencies in Dr. Repsher's opinion and rationally assigned it "little probative weight." Decision and Order at 16-17, 25-26. We, therefore, affirm the administrative law judge's evaluation of Dr. Repsher's opinion, and her finding that it was entitled to "little probative weight" on the issue of legal pneumoconiosis.

Likewise, the administrative law judge properly characterized the opinion of Dr. Dahhan as "problematic in several respects." Decision and Order at 19. To begin, the administrative law judge considered that Dr. Dahhan attributed the qualifying blood gas test values obtained by Dr. Rasmussen to the effects of a "very low barometric pressure [at the test site]." Decision and Order at 19. An administrative law judge may properly consider a medical opinion detailing factors, such as circumstances surrounding the testing, that render a particular blood gas study unreliable. *See Big Horn Coal Co. v. Director, OWCP* [*Alley*], 897 F.2d 1052, 1056 n.4, 13 BLR 2-372, 2-378-80 n.4 (10th Cir. 1990); *Ramey v. Kentland Elkhorn Coal Corp.*, 755 F.2d 485, 7 BLR 2-124 (4th Cir. 1985); *Vivian v. Director, OWCP*, 7 BLR 1-360 (1984); *Cardwell v. Circle B Coal Co.*, 6 BLR 1-788 (1984); *see also Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). In this case, the administrative law judge properly found that the regulation, *see* 20 C.F.R. §718.204(b)(2)(ii), allows for test results to be compared with results from test sites within a specified range of altitudes.[10] Thus, the administrative law judge rationally

[9] The evidence in this case includes non-qualifying pulmonary function studies and both non-qualifying and qualifying arterial blood gas studies. Decision and Order at 22-24.

[10] The regulation provides that a miner "shall be found to be totally disabled, in the absence of rebutting evidence," if the evidence meets the standards of the arterial blood

observed that, because the test sites utilized by Drs. Dahhan and Rasmussen are each located within 2,999 feet above sea level, their test results may validly be compared to one another. *Id.*; 20 C.F.R. Part 718, Appx. C. In light of this, the administrative law judge rationally concluded that Dr. Dahhan "does not sufficiently explain how the quality standards of the regulations were violated or the tests were rendered unreliable[,] so as to support his opinion that the qualifying arterial blood gas tests conducted by Dr. Rasmussen were caused by the low barometric pressure at the site when they were performed." *Id*. The administrative law judge also rationally found that Dr. Dahhan's attribution of claimant's blood gas exchange abnormalities to obesity, "poor conditioning," and sleep apnea, rather than to coal dust exposure, did not account for claimant's twenty-one years of coal dust exposure as a contributing factor in the miner's reduced oxygen levels upon exercise. *See Barrett*, 478 F.3d at 355, 23 BLR at 2-482; Decision and Order at 20.

In addition, the administrative law judge observed that Dr. Dahhan relied on evidence outside the record, Dr. Rasmussen's pulmonary function test of October 17, 2006, to conclude that the abnormalities demonstrated in claimant's blood gas exchange were not due to parenchymal lung disease, but were instead due to another etiology such as obesity and sleep apnea. Decision and Order at 20; *see* Employer's Exhibit 2, 3. Employer's assertion that Dr. Dahhan's "opinions did not rely to any great degree on that report," and that "[any deficiency] was cured in Dr. Dahhan's subsequent report[,] which did not refer to the 2006 Rasmussen report," is unavailing. Employer's Brief at 3.

The administrative law judge permissibly factored in Dr. Dahhan's reliance upon the inadmissible evidence when deciding to assign less weight to the physician's opinion. *Harris v. Old Ben Coal Co*., 23 BLR 1-98, 1-108 (2006)(en banc)(McGranery & Hall, JJ., concurring and dissenting). This was rational, as a permissible exercise of the administrative law judge's discretion. *Harris*, 23 BLR at 1-108. Further, because the administrative law judge provided numerous reasons for assigning less weight to Dr. Dahhan's opinion, employer's argument that the administrative law judge improperly discounted "the entire testimony of Dr. Dahhan" because of his reference to the October 17, 2006 pulmonary function study is both inaccurate and meritless. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 2-3; Decision and Order at 20. We, therefore, affirm the administrative law judge's accordance of "diminished weight" to Dr. Dahhan's opinion on the issue of legal

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gas study values listed in Appendix C to Part 718. 20 C.F.R. §718.204(b)(2)(ii). There are three tables found at Appendix C: 1) For arterial blood gas studies performed at test sites up to 2,999 feet above sea level; 2) For arterial blood gas studies performed at test sites 3,000 to 5,999 feet above sea level; and 3) For arterial blood gas studies performed at test sites 6,000 feet or more above sea level. 20 C.F.R. Part 718, Appendix C.

pneumoconiosis. *Harris*, 23 BLR at 1-108; *Troup v. Reading Anthracite Coal Co*., 22 BLR 1-11, 1-21 (1999)(en banc); *Clark*, 12 BLR at 1-153; *Kozele*, 6 BLR at 1-382 n.4.

In conclusion, therefore, we affirm the administrative law judge's finding that the existence of legal pneumoconiosis was established on the basis of Dr. Rasmussen's opinion, as supported by Dr. Agarwal's opinion, pursuant to Section 718.202(a)(4).

Total Disability

Next, employer challenges the administrative law judge's finding of total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 22-24. Specifically, employer contends that the administrative law judge erred in not finding that the opinions of Drs. Repsher and Dahhan constitute "contrary probative evidence" that claimant did not have a totally disabling respiratory or pulmonary impairment. Employer's assertions are unavailing.[11] *See* Employer's Brief at 2, 4; Employer's Exhibits 2, 3, 4.

The administrative law judge stated that, because Dr. Repsher "offers no support for his assertions about exercise induced hypoxemia and makes general statements, I accord his opinion that [c]laimant is not [disabled] little probative weight." Decision and Order at 15, 16, 26; *see* Employer's Brief at 7-9. Additionally, the administrative law judge found that Dr. Repsher's opinion was based on both a questionable assessment of the physical exertion required in claimant's usual coal mine employment, and on Dr. Dahhan's view that claimant does not have legal pneumoconiosis, contrary to her determination. *Id*. at 26. In comparison, the administrative law judge determined that the findings of Dr. Rasmussen, as supported by those of Dr. Agarwal, that claimant does not have the respiratory capacity to return to his usual coal mine employment, to be well-reasoned because it was based on claimant's objective arterial blood gas study results and a review of the miner's coal mine jobs. Claimant's Exhibit 2; Director's Exhibit 14; *see* Employer's Brief at 8.

As substantial evidence supports the administrative law judge's finding, and as we have affirmed the administrative law judge's credibility findings with respect to the medical opinions of record, we reject employer's assertion that the administrative law judge selectively analyzed the medical opinion evidence in assigning probative weight to the opinion of Dr. Rasmussen, as supported by that of Dr. Agarwal, that claimant was

[11] Employer does not contend that the administrative law judge erred in finding that the blood gas studies did not establish total disability, or that the administrative law judge failed to weigh the non-qualifying pulmonary function studies with the blood gas studies. *See* Employer's Brief at 7-9.

disabled from a respiratory viewpoint. Director's Exhibit 14; Claimant's Exhibits 2, 3; Decision and Order at 14-15. Accordingly, we affirm the administrative law judge's finding that the qualifying blood gas study evidence of record was not outweighed by the contrary evidence of record, *see Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987), and we affirm the administrative law judge's finding that total respiratory disability was established pursuant to Section 718.204(b)(2) overall.

Disability Causation

Finally, we reject employer's assertion that the administrative law judge erred in finding that claimant established that his total disability is due to legal pneumoconiosis at 20 C.F.R. §718.204(c). The administrative law judge rationally found that Dr. Rasmussen provided a well-reasoned and well-documented opinion that claimant's legal pneumoconiosis is a substantially contributing cause in his totally disabling respiratory impairment. Decision and Order at 28; s*ee Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-17-19 (2004). By comparison, she permissibly accorded "little probative weight" to the disability causation opinions of Drs. Repsher and Dahhan, because they did not diagnose the existence of legal pneumoconiosis, contrary to her finding. Decision and Order at 27; *see Stephens*, 298 F.3d at 522, 22 BLR at 512; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Toler v. Eastern Associated Coal Co.*, 43 F.2d 109, 19 BLR 2-70 (4th Cir. 1995). Therefore, we affirm the administrative law judge's determination that claimant is totally disabled due to pneumoconiosis pursuant to Section 718.204(c).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge