BRB No. 10-0181 BLA

JAMES L. DAVIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	DATE ISSUED: 11/17/2010
	)	
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 Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (K & L Gates LLP), Washington, D.C., for employer.

Sarah M. Hurley (M. Patricia Smith, Solicitor of Labor; Rae Ellen 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 Awarding Benefits (2008-BLA-05607) of Administrative Law Judge Linda S. Chapman (the administrative law judge) on a claim filed on January 22, 2007, pursuant to the provisions of 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). The administrative law judge credited claimant with 28.21 years of coal mine employment, and adjudicated this claim pursuant to the regulations at 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of either clinical or complicated

pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4) and 20 C.F.R. §718.304, but found that the medical opinion evidence was sufficient to establish legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and that the evidence was sufficient to establish the existence of pneumoconiosis overall at 20 C.F.R. §718.202(a). The administrative law judge also found that claimant was entitled to the presumption at 20 C.F.R. §718.203(b) that his pneumoconiosis arose out of coal mine employment. The administrative law judge further found that the evidence was sufficient to establish total disability at 20 C.F.R. §718.204(b), and that the total disability was due to pneumoconiosis (disability causation) at 20 C.F.R. §718.204(c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in failing to find "good cause" established pursuant to 20 C.F.R. §725.456(b)(1), to accept x-ray evidence in excess of the evidentiary limits set forth at 20 C.F.R. §725.414, which was the basis for Dr. Fino's diagnosis of sarcoidosis. Employer further contends that the administrative law judge erred in according less weight to the opinion of Dr. Fino on the issues of legal pneumoconiosis and disability causation, because the doctor relied on the excess x-ray evidence to form his opinion on those issues. Employer also contends that the administrative law judge erred in finding that legal pneumoconiosis was established at Section 718.202(a)(4), that pneumoconiosis was established overall at Section 718.202(a), that claimant was entitled to the presumption that his pneumoconiosis arose out of coal mine employment at Section 718.203(b), that total disability was established at Section 718.204(b), and that disability causation was established at Section 718.204(c). In addition, employer contends that the administrative law judge erred in determining the date from which benefits commence. The Director, Office of Workers' Compensation Programs (the Director), responds, arguing that the administrative law judge acted properly in finding that employer failed to establish "good cause" for the admission of nine x-rays, in excess of the evidentiary limitations, on which Dr. Fino based his diagnosis of sarcoidosis. The Director concedes, however, that there may be merit to employer's argument that the administrative law judge erred in assigning little weight to Dr. Fino's diagnosis of sarcoidosis, because of the doctor's reliance on excess x-rays, when, in fact, there was admissible evidence that supported Dr. Fino's sarcoidosis diagnosis. Claimant has not field a brief in this appeal.

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.[1] 33 U.S.C. §921(b)(3), as incorporated into the

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant was employed in the coal mining industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 3.

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 pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that the miner was totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled due to pneumoconiosis, if fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established.

By Order dated September 14, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of the 2010 amendments. *Davis v. Dominion Coal Corp.*, BRB No. 10-0181 BLA (Sept. 14, 2010)(unpub. Order). The Director and employer have responded to the Board's Order. The Director contends that if the administrative law judge's decision awarding benefits is affirmed by the Board, remand of the case for consideration under Section 411(c)(4) would not be necessary. If, however, the Board does not affirm the award, the Director contends that the administrative law judge's decision must be vacated and the case must be remanded to the administrative law judge for consideration under Section 411(c)(4). The Director further contends that, since successful invocation of the Section 411(c)(4) presumption will alter the parties' burdens of proof, the administrative law judge should, on remand, allow for the submission of additional evidence. However, the Director notes that any additional evidence submitted must be consistent with the evidentiary limitations at 20 C.F.R. §725.414, and that if evidence exceeding those limitations is offered, it must be justified by a showing of good cause at 20 C.F.R. §725.456(b)(1). Employer contends that, even if the Board does not affirm the administrative law judge's award of benefits, the presumption at Section 411(c)(4) would not apply to this case, as the evidence does not establish a totally disabling respiratory impairment at Section 718.204(b).

Evidentiary Limitations/Good Cause

Employer asserts that the administrative law judge erred in failing to find good cause established at Section 725.456(b)(1), for the admission of nine x-rays reviewed by Dr. Fino, and to which he referred in his opinion and deposition testimony. Employer asserts that the administrative law judge should have found that "good cause" existed for the admission of these excess x-rays, as Dr. Fino testified that the additional x-rays were necessary to his diagnosis of sarcoidosis. Employer also asserts that the administrative law judge erred in according less weight to the opinion of Dr. Fino because it was based on these excessive x-rays, which were deemed inadmissible. In support of its "good cause" argument, employer asserts that the Board should adopt an interpretation of the regulations "which insures that all relevant evidence is considered." Employer's Brief at 6-7. Employer further argues that 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) and Section 413(b) of the Act, 30 U.S.C. §932(a), does not allow for the "application of strict exclusionary rules and that administrative law judges in a black lung proceeding should err on the side of inclusion of evidence, rather than exclusion of evidence." Employer's Brief at 7. The Director responds, asserting that the administrative law judge properly found that employer had not met its burden of establishing "good cause" for the admission of x-ray evidence in excess of the evidentiary limitations, and that the excess x-ray evidence in question, was, in fact, superfluous.

The regulation at Section 725.414, in conjunction with 20 C.F.R. §725.456(b)(1), sets limits on the amount of specific types of medical evidence that parties can submit into the record. 20 C.F.R. §§725.414, 725.456(b)(1). The claimant and the party opposing entitlement may each "submit, in support of its affirmative case, no more than two chest X-ray interpretations, the results of no more than two pulmonary function tests, the results of no more than two arterial blood gas studies, no more than one report of an autopsy, no more than one report of each biopsy, and no more than two medical reports." 20 C.F.R. §725.414(a)(2)(i), (a)(3)(i), (a)(3)(iii). In rebuttal of the case, each party may submit "no more than one physician's interpretation of each chest X-ray, pulmonary function test, arterial blood gas study, autopsy or biopsy submitted by" the opposing party "and by the Director pursuant to §725.406."[2] 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii), (a)(3)(iii). Following rebuttal, each party may submit "an additional statement from the physician who originally interpreted the chest X-ray or administered the

[2] Pursuant to 20 C.F.R. §725.406, the Director, Office of Workers' Compensation Programs (the Director), provides a complete pulmonary evaluation of the miner, the results of which are "not . . . counted as evidence submitted by the miner under §725.414." 20 C.F.R. §725.406(b).

objective testing," and, where a medical report is undermined by rebuttal evidence, "an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence." *Id*. "Notwithstanding the limitations" of Section 725.414(a)(2) and (3), "any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease, may be received into evidence." 20 C.F.R. §725.414(a)(4). Pursuant to Section 725.414(a)(5)(c), "[a] physician who prepared a medical report admitted under this section may testify with respect to the claim at any formal hearing . . . or by deposition." 20 C.F.R. §§725.414(a)(5)(c). "Medical evidence that exceeds the limitations of Section 725.414 "shall not be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1).

In this case, the administrative law judge noted, in her August 17, 2009 Order closing the record, that she had addressed the admissibility of Dr. Fino's report and deposition testimony, wherein Dr. Fino addressed his need to review additional x-rays. *See* Employer's Exhibits 3 and 8. The administrative law judge observed that, at the hearing, claimant had objected to the admissibility of Employer's Exhibits 3 and 8 on the ground that Dr. Fino referred to a number of x-rays read by him that were in excess of the evidentiary limitations at Section 725.414. In response, the administrative law judge noted that employer argued that Dr. Fino stated that he needed to review the additional x-rays in order to make a determination regarding the presence or absence of complicated pneumoconiosis.

Citing *H.M.* [*McCowan*] *v. Clinchfield Coal Co.*, BRB No. 07-0288 BLA (Dec. 31, 2007) (unpub.), the administrative law judge noted that the Board held therein that "good cause" to exceed the evidentiary limitations was not established, where employer asserted that the "excess films [were] relevant to the issue of whether claimant suffered from complicated pneumoconiosis." Decision and Order at 3. The administrative law judge, therefore, properly rejected, as without merit, employer's argument that excess x-rays were necessary in order for Dr. Fino to make a finding on the presence of complicated pneumoconiosis. *See Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-59 (2004)(*en banc*). Further, the administrative law judge properly found that Dr. Fino's testimony that the excess x-rays were necessary to aid in his diagnosis of sarcoidosis,[3] fails to establish that employer showed "good cause" for the admission of the excess x-rays interpreted by Dr. Fino. *See Dempsey*, 23 BLR at 1-59.

[3] Dr. Fino stated that his review of these additional x-rays showed that the abnormalities seen on them were "not consistent with a coal mine dust related pulmonary condition," but were "most consistent with sarcoidosis." Decision and Order at 11; Employer's Exhibit 3.

Additionally, employer's contentions, that the evidentiary limitations violates the APA and Section 413(b) of the Act, 33 U.S.C. §923(b), which provides that all relevant evidence be considered, are unavailing. The Fourth Circuit has already considered and rejected these arguments. *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 23 BLR 2-430 (4th Cir. 2007). Employer's evidentiary challenge in this case, is, therefore, rejected.

Legal Pneumoconiosis at 20 C.F.R. §718.202(a)(4)

Employer next asserts that the administrative law judge erred in finding the existence of legal pneumoconiosis established at Section 718.202(a)(4), based on the medical opinions of Drs. Koenig and Baker. Specifically, employer asserts that the administrative law judge erred in finding the opinions of Drs. Koenig and Baker sufficient to establish legal pneumoconiosis, because their opinions were not based on a sound foundation.

In finding legal pneumoconiosis established, the administrative law judge credited the opinion of Dr. Koenig, claimant's treating physician, who found a moderately severe obstructive disease due to coal dust exposure. The administrative law judge credited Dr. Koenig's opinion because the doctor "saw [claimant] and reviewed his objective test results as part of his pulmonary evaluations" of claimant. Decision and Order at 19. Further, the administrative law judge found Dr. Koenig's opinion supported by the opinion of Dr. Baker, who diagnosed obstruction, chronic bronchitis and hypoxemia due to coal dust exposure. Decision and Order at 19. Considering Dr. Castle's contrary opinion, the administrative law judge concluded that it was not as credible as the opinions of Drs. Koenig and Baker, because Dr. Castle "did not have the more recent results obtained by Dr. Fino, Dr. Baker, or Dr. Koenig for review." Decision and Order at 19. Regarding the opinion of Dr. Fino, who concluded that claimant's obstructive ventilatory abnormality was not related to his coal dust exposure, but might be due to claimant's sarcoidosis, the administrative law judge accorded it little weight because it was based on a "review of x-rays in excess of the evidentiary limitations." Decision and Order at 19.

We agree with employer that the administrative law judge did not sufficiently explain why she credited the opinions of Drs. Koenig and Baker, on the issue of legal pneumoconiosis. Further, while the administrative law judge stated that the opinions of Drs. Koenig and Baker were more credible than Dr. Castle's opinion because they were based on "more recent results," Decision and Order at 19, she did not identify the results to which she was referring or explain how they were more reflective of claimant's current condition. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-12 (6th Cir. 2003). Further, as employer contends, the administrative law judge erred in failing to consider other evidence in the record, apart from the excluded x-rays, which supported Dr. Fino's finding of sarcoidosis. *See Harris*, 23 BLR at 1-108; Director's Exhibit 14;

Employer's Exhibit 7. Thus, while the administrative law judge properly concluded that Dr. Fino's opinion was entitled to less weight because it was based on excluded x-ray evidence at Section 725.414, *Dempsey*, 23 BLR at 1-59, the administrative law judge should also have considered Dr. Fino's finding of sarcoidosis, in light of the admissible x-ray evidence of record.[4] *Harris*, 12 BLR at 1-108. Accordingly, the administrative law judge did not sufficiently explain her reasons for evaluating the evidence relevant to the issue of legal pneumoconiosis at Section 718.202(a)(4). We, therefore, vacate the administrative law judge's finding of legal pneumoconiosis at Section 718.202(a)(4), and remand the case for the administrative law judge to reconsider all the relevant evidence. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Further, if reached, the administrative law judge must weigh together all of the evidence relevant to the existence of both clinical and legal pneumoconiosis to determine whether pneumoconiosis is established overall at Section 718.202(a). *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).

Causality at 20 C.F.R. §718.203

Employer also contends that the administrative law judge erred in affording claimant a presumption that his respiratory impairment arose out of coal mine employment, based on claimant's more than ten years of coal mine employment. We agree with employer that claimant carries the burden of establishing that his respiratory impairment arose out of coal mine employment in order to establish the existence of legal pneumoconiosis. *See* 20 C.F.R. §718.201. A finding that claimant's pneumoconiosis arose out of coal mine employment at Section 718.203 is, however, subsumed in a finding that claimant's respiratory impairment arose out of coal mine employment at Section 718.202(a)(4). *See* 20 C.F.R. §718.201; *Andersen v. Director, OWCP*, 455 F.3d 1102, 23 BLR 2-332 (10th Cir. 2006); *Kiser v. L & J Equipment Co.*, 23 BLR 1-246 (2006). Therefore, should the administrative law judge, on remand, find that claimant has established the existence of legal pneumoconiosis at Section 718.202(a)(4), claimant would necessarily have established that his pneumoconiosis arose out of coal mine employment. *See* 20 C.F.R. §§718.201, 718.203.

[4] Dr. Scott commented that "sarcoid could explain all the findings" that he observed in his interpretation of the August 28, 2007 x-ray film. Director's Exhibit 14. Dr. Wheeler diagnosed "minimal bilateral lower hilar adenopathy favors sarcoid," among his other findings, in his interpretation of the October 17, 2008 chest x-ray film. Employer's Exhibit 7.

Total Disability at 20 C.F.R. §718.204(b)

Additionally, employer asserts that the administrative law judge erred in evaluating the evidence relevant to total disability and, therefore, erred in finding total disability established at Section 718.204(b), based on the medical opinion evidence. In considering the medical evidence relevant to total disability at Section 718.204(b), the administrative law judge found that neither the pulmonary function study nor blood gas study evidence established total disability at Section 718.204(b)(2)(i) and (ii). The administrative law judge also found that total disability was not established at Section 718.204(b)(2)(iii), as there was no evidence of cor pulmonale with right-sided congestive heart failure.

Turning to Section 718.204(b)(2)(iv), however, the administrative law judge found total disability established, based on the more recent medical opinions of Drs. Koenig and Fino. The administrative law judge noted that Dr. Koenig concluded that claimant was disabled from his last coal mine employment due to the strenuous nature of that work and his moderately severe respiratory impairment.[5] Likewise, the administrative law judge credited Dr. Fino's opinion that claimant's moderate obstructive ventilatory abnormality would prevent him from performing his usual coal mine employment.[6] The administrative law judge accorded little weight to the opinion of Dr. Baker, because "he did not address the question of whether [claimant's respiratory] impairment would prevent him from returning to his previous coal mining job." Decision and Order at 20; Claimant's Exhibit 1. The administrative law judge also accorded little weight to the opinion of Dr. Castle, who diagnosed only a "very mild, clinically insignificant obstruction and no pulmonary impairment,"[7] because Dr. Castle did not have the

[5] Dr. Koenig opined that claimant, who worked in the coal mines for approximately 30 years, from 1969 to 1998, held a variety of jobs. Dr. Koenig stated that claimant's last job was as a roof bolter, which involved very strenuous work, including carrying 100 pounds of equipment and bolts for 50 feet. Claimant's Exhibit 4.

[6] Dr. Fino found that claimant worked in underground coal mining for thirty years until 1998, noting that his last job as a roof bolter involved heavy labor. Employer's Exhibit 3.

[7] Dr. Castle found that the miner had about 30 years of coal mine employment, ending in about 1998. The doctor noted that claimant's last job was as a roof bolting maching operator for about seven years; that claimant made his own bolts, set up the machine, drilled the holes, put the bolts in and tightened them up, noting that all of this required some heavy labor. The doctor also noted that claimant ran a continuous miner

opportunity to review "the more recent results" of other physicians. Decision and Order at 19. The administrative law judge, therefore, concluded that, having reviewed all the relevant evidence, total disability was established at Section 718.204(b)(2) by the medical opinion evidence.

First, we agree with employer that the administrative law judge erred in finding total disability established at Section 718.204(b)(2)(iv), because he failed to address and consider the opinion of Dr. Rasmussen, who found, based on claimant's objective test results and the results of his physical examination, that claimant retained the pulmonary capacity to perform his regular coal mine work.[8] *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986). We also agree with employer that the administrative law judge erred in failing to explain, pursuant to the APA, his basis for crediting the opinions of Drs. Koenig and Fino, over the other opinions, when all of the physicians conducted examinations, took histories and conducted objective testing. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Further, we agree with employer that the administrative law judge's summary finding, that she credited the opinions of Drs. Koenig and Fino because they most recently examined claimant, was not rational, without further explanation, since Drs. Koenig and Fino examined claimant in October 2008 and February 2009, while Dr. Castle examined claimant in December 2007. *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Shedlock*, 9 BLR at 1-199. On remand, the administrative law judge must consider and weigh Dr. Rasmussen's opinion and must explain on what basis she determined that the opinions of Drs. Koenig and Fino were better reasoned than the opinion of Dr. Castle. The administrative law judge must also explain how she compared the physical demands of claimant's usual coal mine employment with the doctors' disability assessments. In particular, the administrative law judge must explain her decision to credit some doctors' opinions over others, since all of the doctors found that claimant's usual coal mine employment was strenuous, but some doctors said he could perform that work, while others said that he could not. *See Scott v. Mason Coal Co.*, 14 BLR 1-37, 1-41 (1990) (*en banc* recon.), *rev'd on other grds*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995).

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for about 12 years and that he also ran a buggy, hauling coal from the mine to the dump. Employer's Exhibit 5.

[8] Dr. Rasmussen examined claimant in March of 2007, noting that claimant had been employed in coal mining for approximately 38 years, last working in the mines in 1998. Dr. Rasmussen noted that claimant had been a shuttle car operator, mainline motorman, long wall worker, mine operator, and roof bolting machine operator. Dr. Rasmussen opined that claimant retained the pulmonary capacity to perform his regular coal mine work. Director's Exhibit 10.

Disability Causation at 20 C.F.R. §718.204(c)

Further, employer contends that the administrative law judge erred in finding disability causation established at Section 718.204(c), based on her evaluation of the evidence. The administrative law judge found that disability causation was established, based on the opinions of Drs. Koenig and Baker, who found that claimant's disabling obstructive impairment was due to his coal dust exposure. The administrative law judge accorded little weight to the opinion of Dr. Fino, that claimant's disabling obstructive impairment was due to sarcoidosis, because Dr. Fino's diagnosis of sarcoidosis was based on a review of inadmissible x-rays, in violation of the evidentiary limitations set forth at Section 725.414.

We agree with employer that the administrative law judge did not sufficiently explain her bases for finding that the opinions of Drs. Koenig and Baker established disability causation at Section 718.204(c), as required by the APA. *See Wojtowicz*, 12 BLR at 1-165. Further, as employer contends, the administrative law judge's acceptance of Dr. Baker's opinion on the issue of disability causation, after finding that the doctor failed to address whether claimant had a totally disabling respiratory impairment at Section 718.204(b)(2)(iv), is irrational. *See Scott*, 14 BLR at 1-41; Decision and Order at 20. Regarding the opinion of Dr. Fino, the administrative law judge properly accorded it less weight because Dr. Fino relied on inadmissible x-ray evidence to opine that sarcoidosis was the cause of claimant's total disability. *See 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) (McGranery & Hall, JJ., concurring and dissenting). However, the administrative law judge erred in failing to consider whether Dr. Fino's finding of sarcoidosis was supported by other admissible evidence. *See discussion supra* at 7; *see Harris*, 23 BLR at 1-108. Accordingly, we vacate the administrative law judge's finding that disability causation was established, and remand the case for the administrative law judge to consider the relevant evidence, and more fully explain his reasons for crediting or discrediting it. Further, on remand, the administrative law judge should also address Dr. Rasmussen's opinion on disability causation.[9]

[9] Employer also contends that the administrative law judge impermissibly conflated her findings of total disability at 20 C.F.R. §718.204(b) and disability causation at 20 C.F.R. §718.204(c). On remand, the administrative law judge must make separate findings at Section 718.204(b) and Section 718.204(c). *See* 20 C.F.R. §718.204(b), (c); *Scott v. Mason Coal Co.*, 14 BLR 1-37, 1-41 (1990)(*en banc* recon.), *rev'd on other grds*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995).

Commencement Date of Benefits

Employer contends that the administrative law judge erred in failing to explain how she arrived at the month that claimant filed his application for benefits as the date from which benefits commence. In light of our remand of the case for reconsideration of the evidence relevant to the issues of pneumoconiosis, disability and disability causation, we vacate the administrative law judge's finding regarding the date from which benefits commence, and remand the case for reconsideration of that issue, if reached. *See* 20 C.F.R. §725.503(b); *Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989).

Section 411(c)(4) Amendments

Further, because we vacate the administrative law judge's decision awarding benefits, we also remand this case for consideration under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). If the administrative law judge finds that claimant is entitled to invocation of the Section 411(c)(4) presumption, she must then determine whether employer has met its burden of rebutting the presumption by showing that claimant does not have pneumoconiosis or that his total disability "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4). The administrative law judge must allow for the submission of evidence by the parties to address the change in law. *See* 20 C.F.R. §§410.414, 725.456.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part, vacated in part, and the case is remanded to the administrative law judge for further proceedings 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