BRB No. 97-1356 BLA

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| CYRUS A. COLLINS | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
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| J & L STEEL (LTV STEEL) | ) | DATE ISSUED: |
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| Employer-Respondent | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
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| | ) | |
| Petitioner | ) | DECISION and ORDER |

Appeal of the Decision and Order of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Gregory C. Hook (Hook and Hook), Waynesburg, Pennsylvania, for claimant.

Jeffrey S. Goldberg (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order (96-BLA-0906) of Administrative Law Judge Gerald M. Tierney (the administrative law judge) awarding benefits on a claim filed pursuant

to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Claimant filed his third application for benefits on October 12, 1989 which the district director denied under the provisions of 20 C.F.R. §725.309 on the grounds that the newly submitted evidence did not demonstrate a material change in conditions as the evidence failed to establish any elements of entitlement decided against claimant in his prior claim.[1] Director's Exhibit 19. Following claimant's timely appeal of the denial of his claim, in an Order dated November 28, 1990, the Board remanded this case to the administrative law judge for a hearing. *See Collins v. J & L Steel*, BRB No. 90-758 BLA (unpub. Order); *Dotson v. Director, OWCP*, 14 BLR 1-10 (1990)(*en banc* Order); *Lukman v. Director, OWCP*, 896 F.2d 1248, 13 BLR 2-332 (10th Cir. 1990), *rev'g Lukman v. Director, OWCP*, 11 BLR 1-71 (1988)(*en banc recon*.); Director's Exhibit 22. Subsequent to the hearing, Administrative Law Judge Edward Terhune Miller issued a Decision and Order on November 9, 1994. Director's Exhibit 107. Judge Miller found the newly submitted evidence sufficient to demonstrate a material change in conditions pursuant to Section 725.309. Judge Miller also dismissed Clinchfield Coal Company (Clinchfield) and its insurer, the West Virginia Coal Workers' Pneumoconiosis Fund (CWPF) as the responsible operator/carrier and found LTV Steel (LTV) to be the responsible operator.[2] Based on the terms of the bankruptcy settlement agreement between the Director and LTV, Judge Miller held the Black Lung Disability Trust

[1]In 1984, claimant filed his first application for benefits which the district director denied by reason of abandonment in September 1984. Director's Exhibit 41. Claimant filed his second application for benefits on October 29, 1985 which the district director denied on March 31, 1986 because the evidence failed to establish any of the elements of entitlement. Director's Exhibit 42.

[2]During the processing of claimant's third application for benefits, the Director, Office of Workers' Compensation Programs (the Director), mailed Notices of Claim to Glory Coal Company (Glory), to Frances R. Tait and R. Hays Shelton as directors of Glory, to J & L Steel and its insurer, LTV Steel (LTV), to Clinchfield Coal Company (Clinchfield), and to the West Virginia Coal Workers' Pneumoconiosis Fund (CWPF) as the insurer of Glory and Clinchfield. Director's Exhibits 24, 33, 34, 56, 62, 63. In 1992, before the hearing in this matter, the Director dismissed, as responsible operators, Glory because its corporate charter had been dissolved by court order in 1980, and Tait and Shelton, the corporate officers, because they could not be located. Director's Exhibit 73. In 1986, LTV filed for Chapter 11 bankruptcy protection. Director's Exhibit 90A. In 1987, the Director filed a proof of claim for benefits paid and future benefit liability. *Id*. In October 1992, the Director and LTV signed a settlement agreement and release which the bankruptcy court approved. *Id.*

Fund (Trust Fund) liable for benefits.[3] *Id*. On the merits, Judge Miller credited claimant with thirty-seven years of coal mine employment and found the evidence of record insufficient to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. *Id*.

On October 17, 1995, claimant timely requested modification pursuant to 20 C.F.R. §725.310. Director's Exhibit 109. On December 4, 1995, the district director denied modification. Director's Exhibit 112. Claimant requested a hearing within the appropriate time period and the case was assigned to Judge Tierney. 20 C.F.R. §725.310; Director's Exhibit 115. After referral of this case to the Office of Administrative Law Judges but before the hearing, the Director filed a Motion to Remand the case to the district director to rename Clinchfield and its insurer, CWPF, as an additional responsible operator/carrier. The administrative law judge denied this Motion because Clinchfield and CWPN had been dismissed by Judge Miller. *See* September 16, 1996 Order, *Collins v. J & L Steel*, 96-BLA-0906. The Director did not appeal the denial of this Order, and the administrative law judge held a formal hearing on May 28, 1997.

[3] Since Judge Miller denied benefits, the Director did not appeal as he was not a party adversely affected or aggrieved by the decision. *See* 20 C.F.R. §802.201; Director's brief at 2; Director's Exhibit 108.

The present appeal arises from the findings made by the administrative law judge on modification, as well as the denial of the Motion to Remand. Based on the Director's stipulation to the existence of pneumoconiosis, the administrative law judge found that claimant had established both a mistake in a determination of fact and a change in conditions as a matter of law. *See* 20 C.F.R. §725.310. The administrative law judge similarly found that claimant established a material change in conditions under 20 C.F.R. §725.309. The administrative law judge adopted the findings of Judge Miller concerning the issues of responsible operator and Trust Fund liability for the payment of benefits. The administrative law judge found that claimant was a miner under the Act, credited claimant with thirty-seven years of coal mine employment and, based on the filing date, applied the regulations at 20 C.F.R. Part 718. In light of the Director's stipulations at the hearing, the administrative law judge found the existence of pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). The administrative law judge also found the evidence of record sufficient to demonstrate the presence of a totally disabling respiratory impairment due to pneumoconiosis at 20 C.F.R. §718.204(b) and (c). Accordingly, benefits were awarded.[4] On appeal, the Director challenges the denial of his Motion to Remand, the liability of the Trust Fund, and the finding of the presence of a totally disabling respiratory impairment due to pneumoconiosis. Finally, the Director argues that the administrative law judge erred in ordering benefits to commence as of September 1, 1989. Claimant responds, urging affirmance of the administrative law judge's Decision and Order as supported by substantial evidence.[5] LTV has not filed a response brief in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30

[4]Although the administrative law judge found that the Black Lung Disability Trust Fund (Trust Fund) was liable for any benefits in this case, the administrative law judge ordered LTV to pay claimant all benefits to which he is entitled commencing September 1, 1989. 1997 Decision and Order at 3, 9. The administrative law judge subsequently issued an Addendum to his Decision and Order, stating that his prior Decision and Order improperly identified LTV as the party responsible for the payment of benefits to claimant. The administrative law judge thus ordered the Director to pay to claimant all benefits due him.

[5]We affirm the findings of the administrative law judge on the length of coal mine employment and at 20 C.F.R. §§725.309, 725.310 and 718.204(c)(1)-(3) as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 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, 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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

On appeal, the Director specifically argues that Judge Miller erred in dismissing Clinchfield and holding the Trust Fund liable for the payment of benefits. The Director argues that Clinchfield may not rely upon the agreement between LTV and the Department of Labor (DOL) to escape liability, stating that because Clinchfield is not mentioned in the agreement, Clinchfield may not receive any benefit from the agreement. The Director also contends that the settlement agreement specifically provides that DOL shall be responsible for the payment of claimant's fee awards to the extent that such fee awards are not fully satisfied by debtors or third parties. The Director further argues that the release of Clinchfield and similarly situated coal mine operators would violate 26 U.S.C. §9501(d)(1)(B), which established the Trust Fund and provides that it assumes liability for benefits where there is no operator who is liable for the payment of benefits.

Initially, however, we must address the issues raised under *Crabtree v. Bethlehem Steel Corp.*, 7 BLR 1-354 (1984). In addition to the arguments noted above, the Director contends that the re-identification of Clinchfield is not barred by *Crabtree* nd *Director, OWCP v. Trace Fork Coal Co.* [*Matney*], 67 F.3d 503, 19 BLR 2-292 (4th Cir. 1995). In support of his position, the Director asserts that "[b]y filing a motion to remand, and renewing it at the hearing, the director did everything within his control to correct the mistaken responsible operator identification before the ALJ awarded benefits payable by the Trust Fund." Director's Brief at 22. The Director contends further that he could not reasonably be expected to file an appeal of the Order denying remand because that would most likely have resulted in a dismissal of the appeal as interlocutory and such an appeal would also result in piecemeal litigation if benefits had been denied.

The Director also argues that remand of the case to the district director would not result in prejudice to Clinchfield as it actively participated in this case until its dismissal in 1994 and Clinchfield would have an opportunity to submit additional evidence on remand. The Director further argues that remand would not result in

prejudice to claimant even if he must relitigate this claim and, if he lost, would be required to repay benefits because claimant's position is no different than any other claimant who has a non-final award which is later reversed.

In response, claimant argues that the instant case is controlled by the plain meaning of the language contained in the settlement agreement which provides that the Department of Labor (DOL) is responsible for the defense against the claim and the payment of the award of benefits. Claimant also argues that it would be unconscionable for DOL to escape its liability simply because claimant worked for another employer prior to working for LTV. Claimant further contends that to require him to relitigate the claim now would greatly prejudice him by further delaying the claim.

While the Director correctly states that interlocutory orders generally are not appealable, the Board has previously recognized an exception to the general rule against entertaining appeals from interlocutory orders when undue hardship and inconvenience can be avoided. *See Morgan v. Director, OWCP*, 8 BLR 1-491 (1986). The administrative law judge's denial of the Director's Motion to Remand constituted a reviewable collateral order as the administrative law judge's action determined a disputed question that was completely separate from the merits of the claim and too important to be denied reviewed. *See Carolina Power and Light Co. v. U.S. Dept. of Labor*, 43 F.3d 912 (4th Cir. 1995); *see also* 28 U.S.C. §1291; *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981); *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949).[6] In addition, the Board is authorized to hear appeals "raising a substantial question of law or fact taken by any party in interest from decisions or orders." 20 C.F.R. §801.102. Accordingly, the Board could have entertained an appeal of the administrative law judge's denial of the Director's Motion to Remand, despite its interlocutory nature. Indeed, the Director's attempt now to appeal that decision comes too late.

In *Crabtree*, the Board held that the Director must resolve the responsible operator issue in a preliminary proceeding and/or proceed against all putative

[6]The United States Supreme Court has stated that appeals of interlocutory orders are allowed when the interlocutory order constitutes a final determination of a claim separate from, and collateral to, the merits of the cause of action because it is too important to be denied review and because it is too independent of the cause to require that appellate review be deferred until the completion of full case adjudication. See 28 U.S.C. §1291; *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981); *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949).

responsible operators at every stage of the claims adjudication, noting that a separate preliminary proceeding on this issue was more desirable than fully litigating the claim against each operator individually. *Crabtree*, *supra*. The Board explained that concern for due process and the efficient administration of justice compel the conclusion that a claimant who has been awarded benefits should not have to prosecute his claim again, yet, no employer could be required to pay benefits unless it had been able to litigate that claim. *Id.; see also Matney, supra*.

As discussed *supra*, in the instant case, Judge Miller dismissed Clinchfield and CWPF as responsible operator/carrier. Judge Miller found that LTV was the responsible operator and, based on the bankruptcy settlement agreement between the Director and LTV, held the Trust Fund liable for the payment of benefits. *See* ALJ Decision and Order of November 10, 1994 at 8. Judge Miller, however, denied benefits. *Id.* at 11-12. Subsequent to Judge Miller's denial of benefits, claimant filed a timely request for modification. *See* Director's Exhibit 109. After the case was referred to the Office of Administrative Law Judges and prior to the hearing on modification, the Director requested remand to rename Clinchfield and CWPF as the responsible operator/carrier, a request which the administrative law judge denied. *See* Order of September 16, 1996. As a result of the denial of his motion, the Director was fully aware that not only did he disagree with the designation of LTV as the responsible operator, but also that under *Crabtree*, the Trust Fund would be potentially liable for any benefits awarded. *Crabtree*, *supra*. Likewise, the Director knew that under *Crabtree*, he had an obligation to resolve the issue of responsible operator prior to the adjudication of this case.[7] *Id*. Thus, in light of *Crabtree*, the Director could have filed an interlocutory appeal requesting the Board to resolve the responsible operator issue preliminarily. The Director chose not to appeal. In so doing, the Director risked a finding of entitlement and the application of *Crabtree* to this case. It is now too late for the Director to ask for remand to rename Clinchfield and CWPF as the responsible operator/carrier because if either of them were held to be the responsible operator, claimant would be unduly prejudiced by having to

[7]The facts in the instant case are distinguishable from the facts involved in *Director, OWCP v. Oglebay North Co.* [*Goddard*], 877 F.2d 1300 (6th Cir. 1989), *Beckett v. Raven Smokeless Coal Co.,* 14 BLR 1-43 (1990), and *Lewis v. Consolidation Coal Co.,* 15 BLR 1-37 (1991), wherein the United States Court of Appeals for the Sixth Circuit and the Board, respectively, allowed the Director an opportunity to identify a new responsible operator where that new operator was actually identified before an administrative law judge had conducted a hearing and the claimant had not been awarded benefits by an administrative law judge against another operator or the Trust Fund.

relitigate the claim. At the hearing, the Director stipulated to the existence of pneumoconiosis arising out of coal mine employment. *See* Hearing Transcript at 7. Since neither Clinchfield nor CWPF is bound by the Director's stipulation regarding these elements of entitlement, claimant would be required to litigate the issues of the existence of pneumoconiosis and whether the pneumoconiosis arose out of coal mine employment, as well as to relitigate the other issues. *Crabtree*, *supra*. We therefore decline to remand this case to the district director for the renaming of Clinchfield and CWPF.[8]

Turning to the merits, at Section 718.204(c)(4), the Director argues that the administrative law judge erred in crediting the reports of Drs. Manchin and Short which indicated that claimant is totally disabled, and in discrediting the report of Dr. Ranavaya, which reflects that claimant does not have a totally disabling respiratory impairment, without first determining if these reports were reasoned and documented. The Director also argues that the administrative law judge erred in not explaining the basis for his finding that Dr. Levine's opinion is reasoned and credible. The Director asserts that the administrative law judge's failure to make this determination explicitly violates 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 30 U.S.C. §932(a).

[8]We reject claimant's contention that the Director waived the right to raise the responsible operator issue because the Director failed to appeal the administrative law judge's Addendum to his Decision and Order in which the administrative law judge corrected his error ordering LTV to pay benefits. In his Decision and Order, the administrative law judge clearly indicated that the Trust Fund was liable for any benefits in this case, and the Director has appealed that finding.

In considering the medical opinion evidence under Section 718.204(c), the administrative law judge initially declined to give "controlling weight" to Dr. Fino's opinion because Dr. Fino did not examine claimant. The administrative law judge found Dr. Fino's opinion internally inconsistent because Dr. Fino stated both that claimant retained the respiratory capacity to perform heavy manual labor, and that claimant may be totally disabled due to his lung cancer. The administrative law judge also gave less weight to Dr. Ranavaya's opinion because he did not examine claimant. The administrative law judge further found that the opinions of Drs. Bellote and Sherman were entitled to less weight because they did not consider whether claimant's scleroderma was caused by coal dust exposure and whether this disease caused a respiratory disorder. The administrative law judge found that Dr. Myer's opinion was "vague" in that the physician did not discuss the effect of claimant's twenty-five percent disability on his ability to perform his usual coal mine employment. The administrative law judge credited Dr. Manchin's opinion as he was claimant's treating physician and credited Dr. Levine's opinion as well-documented and well-reasoned. Finally, the administrative law judge found that the opinion of Dr. Short, also a treating physician, supported the findings of Drs. Manchin and Levine as Dr. Short stated that claimant was limited in his abilities to function. Thus, the administrative law judge concluded that claimant had established that he was totally disabled.[9] 1997 Decision and Order at 7.

[9]As the Director does not challenge the administrative law judge's treatment of the reports of Drs. Fino and Bellote, we affirm his findings respecting these opinions. *See Skrack, supra.*

We agree with the Director that the administrative law judge erred in crediting the medical opinions of Drs. Manchin and Short without initially determining whether the reports are reasoned and documented.[10] *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Furthermore, the administrative law judge erred in not explaining why he found Dr. Levine's opinion well reasoned and credible. *Id*. Under the requirements of the APA, the administrative law judge must explain his rationale for finding a medical report reasoned and documented. *See generally Wojtowicz v. Duquesne Light Co.,* 12 BLR 1-162 (1989). A medical opinion is documented if it sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis.[11] *Id*. A reasoned medical opinion is one in which the physician explains how the underlying documentation supports the physician's conclusions. *Id*. We therefore vacate the administrative law judge's credibility findings regarding the medical reports of Drs. Manchin, Short, and Levine. Director's Exhibits 94, 111, 116; Claimant's Exhibit 1. Likewise, we agree with employer that the administrative law judge erred in rejecting Dr. Ranavaya's report solely because he was a nonexamining physician. *See Sterling Smokeless Coal Company v. Akers*, 121 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). On remand, the administrative should examine

[10]When determining whether a medical opinion is reasoned and documented, the administrative law judge must adequately explain his reasons for crediting certain evidence and discrediting other evidence as well as decide if the physicians addressed all of claimant's medical problems in a meaningful way. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge should not automatically credit the testimony of an examining physician merely because the physician personally examined the miner, but must also address the "qualifications of the respective physicians, the explanation of their medical findings, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses." *Akers*, 131 F.3d 441, 21 BLR 2-275-76. Furthermore, the Board has never created a presumption that the opinions of treating or examining physicians shall be given greater weight on the basis of this status; rather, the weight to be accorded all medical opinion evidence is within the discretion of the administrative law judge after he has carefully reviewed the opinions and the supporting documentation. *See Cole v. East Kentucky Collieries*, 20 BLR 1-50 (1996).

[11]A medical report is documented if it is based on items such as a physical examination, symptoms, and patient history. *See Hoffman v. B & G Construction Co.,* 8 BLR 1-65 (1985).

each report to determine the objective factors and the data which serve as the basis for the report and decide if each physician has explained sufficiently how his documentation supports the opinion.[12] *See Gee v. W. G. Moore & Sons*, 9 BLR 1-4 (1986).

The Director also contends that Dr. Short's opinion must be rejected as unreliable because it is not supported by underlying documentation apart from a partial ventilatory study which is not of record. The Director further contends that the administrative law judge erred in implying that Dr. Short's opinion supports the opinions in which Drs. Manchin and Levine found claimant totally disabled. The administrative law judge credited Dr. Short's opinion on the basis of the doctor's position as a treating physician. Although the administrative law judge recognized that Dr. Short did not specifically address whether claimant is totally disabled, the Director states that Dr. Short's finding that claimant is limited in his ability to function is too vague to permit an inference of disability. In a letter dated December 1, 1994, Dr. Short stated that claimant "has become somewhat limited with his ability to function fully due to sclerodactyly and increasing respiratory dysfunction." Director's Exhibit 16. On remand, the administrative law judge should consider whether Dr. Short's opinion is sufficiently definite and reliable regarding claimant's physical limitations so as to constitute credible evidence corroborating findings of a totally disabling respiratory impairment. *See generally McMath v. Director, OWCP*, 12 BLR 1-6 (1988)

[12]The Director contends that, on remand, the administrative law judge should not find the opinions of Drs. Manchin and Levine sufficiently reasoned so as to constitute credible medical opinions. The Director also states that the administrative law judge could find Dr. Ranavaya's opinion more credible since he reviewed the opinions of Drs. Levine and Short as well as the biopsy report, and reasonably concluded that the ventilation testing did not indicate a totally disabling respiratory or pulmonary impairment.

The Director next contends that the administrative law judge erred in rejecting Dr. Sherman's medical opinion at Section 718.204(c)(4). In the instant case, the administrative law judge found that the report of Dr. Sherman was not controlling at Section 718.204(c)(4) because the physician did not consider that claimant's scleroderma could have been caused by coal dust exposure. Decision and Order at 7. Dr. Sherman stated that no objective evidence was submitted to him which substantiated a totally disabling breathing impairment. Dr. Sherman also stated that claimant appeared to be disabled by limited exercise tolerance which might be due to his anemia and/or his chronic musculoskeletal problem. He further stated there was "insufficient evidence to determine whether scleroderma (which is likely related to his coal mine employment) is contributing to his disability." Director's Exhibit 119. The issue at Section 718.204(c) is whether claimant suffer from a totally disabling respiratory or pulmonary impairment. *See* 20 C.F.R. §718.204(c)(1)-(4). As the cause of the respiratory or pulmonary impairment is irrelevant to the issue at Section 718.204(c), the administrative law judge erred in rejecting Dr. Sherman's report because the physician did not consider that claimant's scleroderma could have been caused by coal dust exposure. We therefore vacate the administrative law judge's decision to reject Dr. Sherman's report at Section 718.204(c)(4). On remand, the administrative law judge should consider whether Dr. Sherman's opinion supports a finding that claimant suffers from a totally disabling respiratory or pulmonary impairment under Section 718.204(c)(4).[13] Director's Exhibit 119.

Finally, we also agree with the Director that the administrative law judge must determine the exertional requirements of claimant's usual coal mine employment based on a review of the documentary and testamentary evidence, and then compare the severity of a physician's impairment findings or assessment of physical abilities with the physical requirements of claimant's usual coal mine duties to determine if claimant's respiratory or pulmonary impairment prevents him from performing his usual coal mine employment. *See Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *McMath*, *supra*. We therefore vacate the findings of the administrative law judge at Section 718.204(c)(4) and remand this case for further consideration. Should the administrative law judge find the medical opinion evidence sufficient to support a finding of total respiratory disability under Section 718.204(c)(4), he must then weigh that evidence against the contrary probative evidence to determine whether the evidence is sufficient to establish total disability by a preponderance of the evidence. *See Fields*, *supra*; *Shedlock v.*

[13]The Director contends that, on remand, the administrative law judge should credit Dr. Sherman's opinion as evidence that claimant is not totally disabled under 20 C.F.R. §718.204(c).

*Bethlehem Mines Corp.*, 9 BLR 1-195 (1986) *aff'd on recon.* 9 BLR 1-236 (1987)(*en banc*).

At Section 718.204(b), the Director argues that the administrative law judge erred in failing to determine properly whether Dr. Manchin's opinion is reasoned and documented. The Director contends that the administrative law judge simply noted that Dr. Manchin is claimant's treating physician without addressing the flaws in the opinion. The Director also argues that the administrative law judge erred in stating that Dr. Levine's opinion was well-reasoned and well-documented without stating the reason for this finding. In addition, the Director argues that the administrative law judge mischaracterized Dr. Sherman's opinion pertaining to the cause of claimant's pulmonary disability.

In finding that claimant established that pneumoconiosis was a contributing cause of his total disability pursuant to Section 718.204(b), the administrative law judge initially gave less weight to the opinions of Drs. Bellote and Fino on the ground that they did not diagnose pneumoconiosis. The administrative law judge stated that Dr. Manchin's opinion was entitled to great weight because Dr. Manchin was claimant's treating physician. The administrative law judge further noted that Dr. Levine, in a well-reasoned and well-documented report, also attributed claimant's total disability due to pneumoconiosis. Furthermore, the administrative law judge stated that Dr. Sherman found that claimant was totally disabled due to anemia and chronic musculoskeletal problems. The administrative law judge then stated that Dr. Sherman indicated that the cause of claimant's scleroderma, a musculoskeletal problem which also effects the cardiorespiratory system, was coal dust exposure, and that this finding meets the legal definition of pneumoconiosis under 20 C.F.R. §718.201. 1997 Decision and Order at 8.

We agree that before deciding whether to credit the medical reports, the administrative law judge must determine if each relevant medical opinion is documented and reasoned and provide an explanation for his finding. *See Akers*, *supra*; *Trumbo*, *supra*; *Fields*, *supra*. As discussed *supra*, the administrative law judge erred in according determinative weight to Dr. Manchin's opinion on the basis of his status as treating physician without considering whether the opinion is documented and reasoned.[14] *See Akers*, *supra*. The administrative law judge also

[14]The Director contends that, on remand, the administrative law judge should not find the opinions of Drs. Manchin and Levine sufficiently reasoned so as to constitute credible medical opinions. The Director states that Dr. Manchin failed to explain why he attributed claimant's respiratory impairment to his pneumoconiosis and failed to address claimant's lung cancer and his heavy smoking history. With

erred in stating that Dr. Levine's opinion was well reasoned without providing an explanation for this finding. *See Wojtowicz*, *supra*.

Concerning the report of Dr. Sherman, the Director correctly asserts that the administrative law judge erred in indicating that Dr. Sherman linked claimant's respiratory impairment to his coal mine employment. Director's Exhibit 119; 1997 Decision and Order at 8. As discussed *supra*, Dr. Sherman found that no objective evidence substantiated a totally disabling breathing impairment. Director's Exhibit 119. Dr. Sherman further stated that claimant was unable to perform coal mine employment involving heavy labor based on his response to exercise, noting that this impairment may be due to his anemia and/or his chronic musculoskeletal problem. *Id*. Dr. Sherman further stated that "there is insufficient evidence to determine whether his scleroderma (which is likely related to his coal mine employment) is contributing to the disability." *Id*. We agree with the Director's contention that Dr. Sherman's opinion does not support a finding of causation and therefore vacate the administrative law judge's finding at Section 718.204(b) and remand this case for further consideration. Should the administrative law judge find the evidence sufficient to establish total disability under Section 718.204(c) on remand, the administrative law judge should reconsider whether the evidence is sufficient to establish that pneumoconiosis is a contributing cause of claimant's total disability. *See Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

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regard to Dr. Levine's opinion, the Director contends that Dr. Levine clearly relied on an incorrect smoking history and did not provide sufficient support for his finding that pneumoconiosis contributed to claimant's respiratory conditions.

We also vacate the administrative law judge's determination that benefits commence as of September 1, 1989 as the administrative law judge provided no basis for this finding. We note that the Director correctly argues that a claim is not considered filed until it is received by the district director.[15] *See* 20 C.F.R. §725.303(a)(1). If he again awards benefits, the administrative law judge must reconsider the date from which benefits commence pursuant to the regulatory criteria. 20 C.F.R. §725.503; *see also Rochester & Pittsburgh Coal Co., v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989)*; Owens v. Jewell Smokeless Corp.*, 14 BLR 1-47 (1990); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989).

Accordingly, the Decision and Order of the administrative law judge awarding benefits is affirmed in part, vacated in part and this case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

**Deskbook Sections**

**Part V.**
**BRB Policies and Procedures**
**A. Scope of Review**
**3. Finality**

[15]The record indicates that the district director marked claimant's third application for benefits dated September 29, 1989 as received on October 12, 1989. Director's Exhibit 1.

The Board held that the administrative law judge's denial of the Director's Motion to Remand the case to the district director to rename Clinchfield Coal Company and its insurer as an additional responsible operator/carrier constituted a reviewable collateral order as it determined a disputed question that was completely separate from the merits of the claim and too important to be denied review. The Board thus held that it could have entertained an appeal of the administrative law judge's denial of the Director's Motion to Remand, despite its interlocutory nature. ***Collins v. J & L Steel***, BRB No. 97-1356 BLA (July 26, 1999).

**Part III**
**Procedural Issues**
**D. Parties**

The Board held that the administrative law judge's denial of the Director's Motion to Remand the case to the district director to rename Clinchfield Coal Company and its insurer as an additional responsible operator/carrier constituted a reviewable collateral order as it determined a disputed question that was completely separate from the merits of the claim and too important to be denied review. The Board further held that it could have entertained an appeal of the administrative law judge's denial of the Director's Motion to Remand, despite its interlocutory nature. Thus, the Board held that under *Crabtree v. Bethlehem Steel Corp.,* 7 BLR 1-354 (1984), it was too late for the Director to ask now for remand to rename Clinchfield and its insurer as the responsible operator/carrier. ***Collins v. J & L Steel***, BRB No. 97-1356 BLA (July 26, 1999).