BRB No. 06-0615 BLA

OLLIE LEE BISHOP	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NO. 10 COAL MINE INCORPORATED	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND/BRICKSTREET	)	DATE ISSUED: 04/26/2007
	)	
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 Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Frederick K. Muth (Hensley, Muth, Garton & Hayes), Bluefield, West Virginia for claimant.

Christopher M. Hunter (Jackson Kelly, PLLC), Charleston, West Virginia, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (04-BLA-6680) of Administrative Law Judge Edward Terhune Miller rendered on a subsequent 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 subsequent claim for benefits on October 16, 2003.[1] Director's Exhibit 4. The district director issued a Proposed Decision and Order Awarding Benefits on May 21, 2004. Director's Exhibit 35. At employer's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing, which was held on July 18, 2005.[2] In his Decision and Order issued on April 13, 2006, the administrative law judge determined that the newly submitted evidence established that claimant was totally disabled by a respiratory or pulmonary impairment under 20 C.F.R. §718.204(b), and thus, that claimant had established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge reviewed all of the record evidence relevant to the issues of entitlement and found that claimant established the existence of pneumoconiosis arising out of coal mine employment, and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.203, and 718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's findings as to the existence of pneumoconiosis and disability causation under Sections 718.202(a)(1), (a)(4), and 718.204(c).[3] Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief.

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[1] On September 27, 1973, claimant filed a claim for benefits, which was denied by the deputy commissioner on May 5, 1975 because claimant was still working in the mines and failed to establish his total disability. Director's Exhibit 1. When claimant ceased his coal mine employment, he filed a second claim on November 13, 1979. That claim was denied on April 10, 1981 on the grounds that the evidence was insufficient to establish that claimant suffered from coal workers' pneumoconiosis. *Id.* Claimant filed a third claim on July 20, 1994. The third claim was denied by the district director on October 24, 1994 on the grounds that claimant failed to establish any of the requisite elements of entitlement. Director's Exhibit 2. Claimant took no further action with regard to the denial of his third claim, and the case was administratively closed. *Id*.

[2] Employer stipulated at the hearing that claimant worked fifteen years in coal mine employment. Hearing Transcript at 8.

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant worked fifteen years in coal mine employment, his determination that claimant has a totally disabling respiratory impairment under 20 C.F.R. §718.204(b)(2), and his finding that claimant established a change in an application condition of entitlement pursuant to 20 C.F.R. §725.309. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 14.

The Board's scope of review is defined by statute.[4] The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer's first argument on appeal is that the administrative law judge erred in his consideration of the x-ray evidence for pneumoconiosis under Section 718.202(a)(1).[5] We agree. The record contains a total of thirteen interpretations of seven x-rays. As noted by the administrative law judge, four of claimant's x-rays were submitted in conjunction with his prior claims. Director's Exhibits 1, 2. Of these four x-rays, the administrative law judge found that x-rays dated January 10, 1974, December 7, 1979 and September 2, 1994 were negative for pneumoconiosis.[6] He gave these negative x-rays little probative weight in his consideration of the x-ray evidence, noting that "the age of the older films substantially reduces their credibility because of the progressive nature of the disease." Decision and Order at 18. The administrative law judge further noted that, of the prior claim evidence, a more recent x-ray dated April 29, 1980 had been read as "positive for pneumoconiosis by Drs. Gale and Smith, both dually qualified [as Board-certified radiologists and B readers]." Decision and Order at 18; Director's Exhibits 1, 2.

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[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as claimant's last coal mine employment occurred in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 2.

[5] Because the administrative law judge determined under 20 C.F.R. §725.309 that claimant had established a change in an applicable condition of entitlement, he was required to review all of the record evidence, including the evidence submitted in conjunction with claimant's prior claims, to determine whether claimant established each of the elements of entitlement to benefits. *See Lisa Lee Mines v. Director, OWCP* [*Rutter*], 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995).

[6] The x-ray dated January 10, 1974 was read as negative for pneumoconiosis by an unidentified reader, while the x-ray dated December 7, 1979 was read as positive by Dr. Aycoth, a Board-eligible radiologist, and as negative by Dr. Gordonson, a Board-certified radiologist. Director's Exhibit 1. The September 9, 1994 x-ray was read as positive for pneumoconiosis by Dr. Ranavaya, a B reader; negative for pneumoconiosis by Dr. Franke, a Board-certified radiologist and B reader; and negative by Dr. Gaziano, a B reader. Director's Exhibit 2. The administrative law judge found that "[n]o positive readings exist for the former, [x-ray dated January 10, 1974] and [assigned] greatest weight … to the [negative] interpretations of the two latter films by radiologists who are dually qualified [as Board-certified radiologists and B-readers]." Decision and Order at 18.

With respect to the three x-rays developed in conjunction with claimant's subsequent claim, the administrative law judge noted that an x-ray dated November 12, 2003 had been read once for quality purposes, and once by Dr. Forehand as showing no abnormalities consistent with pneumoconiosis. There was one reading of an x-ray dated March 18, 2004 by Dr. Hippensteel, a B reader, which was negative for pneumoconiosis. There was also one reading of an x-ray dated November 10, 2004 by Dr. Patel, a Board-certified radiologist and B reader, which was positive for pneumoconiosis. Decision and Order at 18; Director's Exhibit 11; Claimant's Exhibit 1; Employer's Exhibit 1. In weighing the conflicting x-ray evidence, the administrative law judge acknowledged that, while a majority of the x-rays were negative as to the existence of pneumoconiosis, he was not required to rely on the numerical superiority of the evidence. Decision and Order at 18. Applying the later evidence rule, and noting Dr. Patel's superior credentials as a dually-qualified physician, the administrative law judge assigned controlling weight to the November 10, 2004 positive x-ray. *Id*. The administrative law judge further cited to the 1980 positive x-ray as additional support for his finding that claimant established the existence of pneumoconiosis. *Id*.

Employer argues that the administrative law judge erred when he stated that the April 29, 1980 x-ray had been read by two dually qualified physicians as positive for pneumoconiosis. Employer's Brief at 6. Employer also asserts that the administrative law judge erred in crediting the most recent positive x-ray, while ignoring the preponderance of negative x-rays in the record. *Id*. Employer contends that the administrative law judge has blindly applied the later evidence rule, disregarding the weight of the negative evidence, and the fact that there were two negative x-rays obtained within one year of the most recent positive x-ray. *Id*.

Employer's assertions of error have merit. Contrary to the administrative law judge's determination, the April 29, 1980 x-ray was not read as positive for pneumoconiosis by two dually qualified physicians. Although Dr. Gale interpreted the April 29, 1980 x-ray as positive for pneumoconiosis with a profusion of 1/1, Dr. Smith also read the film as showing a profusion of 0/1, which is a negative reading for pneumoconiosis. *See* 20 C.F.R. §718.102(b); *Canton v. Rochester & Pittsburgh Coal Co.*, 8 BLR 1-475 (1986). Because the April 29, 1980 x-ray has an equal number of positive and negative readings, by dually qualified Board-certified radiologists and B readers, the administrative law judge erred in stating that the April 29, 1980 x-ray was positive for pneumoconiosis, without resolving the conflict in the readings of that film. 20 C.F.R. §718.202(a)(1). He further erred in relying on the April 29, 1980 x-ray to support his finding of pneumoconiosis under Section 718.202(a)(1). *See Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Additionally, the administrative law judge has failed to adequately explain his decision to apply the later evidence rule to resolve the conflicts in the x-ray evidence.

See Thorn v. Itmann Coal Co., 3 F.3d 713, 18 BLR 2- 16 (4th Cir. 1993). In this case, the administrative law judge should address whether Dr. Patel's positive x-ray is more probative based on the recency of the evidence, given the relatively short span of time (approximately eight months) between the March 18, 2004 negative x-ray and the November 10, 2004 positive x-ray. The administrative law judge should also reassess the probative value of the November 10, 2004 positive x-ray in light of the negative x-ray dated November 12, 2003. *See Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986).

Consequently, because the administrative law judge has mischaracterized the x-ray evidence, *see Tackett*, 7 BLR at 1-703; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984), and has failed to adequately explain his decision to rely on the most recent x-ray evidence, *see Thorn*, 3 F.3d at 718, 18 BLR at 2-23, we vacate the administrative law judge's determination that claimant established the existence of pneumoconiosis under Section 718.202(a)(1). On remand, the administrative law judge must weigh all of the x-rays for and against the existence of pneumoconiosis, and resolve the conflicts in the evidence in accordance with *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992), taking into consideration the quality of the evidence and the radiological qualifications of the readers. *See* 20 C.F.R. §718.202(a)(1); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991) (*en banc*).

We now turn to employer's argument that the administrative law judge erred in his consideration of the medical opinion evidence relevant to whether claimant has pneumoconiosis.[7] Under Section 718.202(a)(4), the administrative law judge stated that

[7] The record reflects that Dr. Cardona examined claimant on April 29, 1980 and diagnosed that claimant suffered from clinical coal workers' pneumoconiosis and chronic obstructive pulmonary disease due to coal dust exposure, although Dr. Cardona did not cite the basis for his opinion. Director's Exhibit 1. Dr. Vasudevan diagnosed on September 2, 1994 that claimant suffered from clinical pneumoconiosis based on the results of a positive x-ray reading. Director's Exhibit 2. Dr. Forehand performed the Department of Labor examination on November 12, 2003 and diagnosed that claimant suffered from clinical coal workers' pneumoconiosis and chronic bronchitis. He indicated that the etiology of claimant's cardiopulmonary diagnosis was coal mine dust exposure and cigarette smoking. Director's Exhibit 11. In a supplemental letter dated January 24, 2004, Dr. Forehand indicated that his diagnosis of coal workers' pneumoconiosis was based on claimant's work history, abnormal exercise arterial blood gas study and "crackles on chest examination. Director's Exhibit 13. Dr. Forehand stated that "also contributing to [claimant's] respiratory impairment is chronic bronchitis due to smoking." *Id*. Dr. Forehand concluded that both of these conditions contributed to claimant's totally disabling respiratory impairment. *Id*. Dr. Rasmussen examined claimant on November 11, 2003 and diagnosed clinical coal workers' pneumoconiosis

he found the diagnoses of pneumoconiosis rendered by Drs. Rasmussen, Forehand, and Cardona to be the most persuasive in establishing the existence of pneumoconiosis. With regard to employer's expert, Dr. Hippensteel, the administrative law judge stated: stated:

> Evaluation of the medical opinions establishes that Dr. Hippensteel does not adequately account for [c]laimant's [fifteen] years of coal mine employment…. While a causal nexus-between a miner's coal mine dust exposure and a chronic pulmonary or respiratory [condition] is not presumed, given [c]claimant's burden of persuasion, I nevertheless find that Dr. Hippensteel does not provide an adequate recognition of the expansive view of "legal" pneumoconiosis." This is not to say that his opinions are hostile to the Act. Nevertheless, when his conclusion is evaluated in conjunction with those of Drs. Forehand and Rasmussen, who ascribe [c]laimant's pulmonary or respiratory disease to coal mine dust exposure, Dr. Hippensteel's opinion does not preclude a finding of coal workers' pneumoconiosis.

Decision and Order at 19.

Employer asserts that the administrative law judge erred in his treatment of Dr. Hippensteel's opinion, and that he improperly shifted the burden of proof to employer to disprove that claimant has pneumoconiosis. Employer further contends that the administrative law judge has failed to adequately explain the weight accorded the evidence at Section 718.202(a)(4) in accordance with the Administrative Procedure Act

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based on a positive x-ray and claimant's significant history of coal dust exposure. Claimant's Exhibit 1. He noted that claimant had "twenty-seven years" of coal mine dust exposure and an "insignificant" smoking history. *Id*. Dr. Rasmussen opined that claimant suffered from "chronic disabling dust disease which is resultant from his coal mine dust exposure." Claimant's Exhibit 1. Dr. Rasmussen did not diagnose chronic bronchitis. *Id*. In contrast, Dr. Hippensteel examined claimant on April 16, 2004 and opined that he did not suffer from clinical coal workers' pneumoconiosis despite having worked in coal mine employment for twenty-five years. Employer's Exhibit 1. He diagnosed that claimant had chronic bronchitis, a disease of the general public, which was sufficient to account for claimant's respiratory symptoms and obstructive respiratory impairment as demonstrated by his pulmonary function tests. *Id*. Dr. Hippensteel cited to claimant's history of heart disease and evidence of emphysema on x-ray to further explain claimant's respiratory condition. *Id*.

(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]

Initially we note that we are unable to affirm the administrative law judge's findings under Section 718.202(a)(4) because the administrative law judge makes no distinction in his analysis as to whether he has credited a physicians' opinion based on a diagnosis of clinical versus legal pneumoconiosis, *see* 20 C.F.R. §718.201. As these are distinct diagnoses, the administrative law judge should determine whether claimant has established either condition by a preponderance of the evidence under Section 718.202(a)(4).

Employer's assertion, that the administrative law judge improperly shifted the burden of proof at Section 718.202(a)(4), also has merit. Although the administrative law judge is correct that the regulations provide an expansive definition of legal pneumoconiosis, claimant is not permitted a presumption that he has legal pneumoconiosis simply because he has been diagnosed with chronic bronchitis. Claimant must establish the causal nexus between his chronic bronchitis and coal mine dust exposure in order to establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). In this case, the administrative law judge rejected Dr. Hippensteel's opinion because the administrative law judge questioned whether claimant's chronic bronchitis was due, at least, in part, to coal dust exposure, and he determined that Dr. Hippensteel's report failed to adequately address that issue. Decision and Order at 19. However, the administrative law judge has also failed to consider that that there are only two physicians, Dr. Hippensteel and Dr. Forehand, who diagnosed that claimant suffers from chronic bronchitis: Dr. Hippensteel stated that chronic bronchitis was a disease of the general population, while Dr. Forehand's supplemental letter dated January 24, 2004 attributes claimant's chronic bronchitis to smoking. Director's Exhibit 13; Employer's Exhibit 1. The administrative law judge erred by rejecting Dr. Hippensteel's opinion without determining that there was affirmative evidence to support a finding of legal pneumoconiosis.

The administrative law judge has failed to rationally explain why he determined that Dr. Hippensteel's opinion did "not adequately account for [c]laimant's [fifteen] years of coal mine employment." Decision and Order at 19. To the extent that the administrative law judge's statement suggests that Dr. Hippensteel has underestimated claimant's coal dust exposure, that finding is not supported by substantial evidence. Dr.

[8] The Administrative Procedure Act requires each adjudicatory decision to include a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record...." 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).

Hippensteel recognized in this case that claimant worked twenty-five years in coal mine employment, and thus, he actually based his opinion on a work history that exaggerated claimant's coal dust exposure. Employer's Exhibit 1.

Moreover, the administrative law judge cites to *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995) to support his rejection of Dr. Hippensteel's opinion. Decision and Order at 20. In *Warth*, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge may reject a medical opinion, stating that a miner does not suffer from legal pneumoconiosis under Section 718.202(a)(4), if the doctor's opinion is premised on an improper assumption that chronic obstructive pulmonary disorders cannot be caused by coal mine dust exposure. *See Warth* 60 F.3d at 173, 19 BLR at 2-268. Because Dr. Hippensteel has not opined, in this case, that coal mine dust exposure can never cause chronic obstructive pulmonary disease, the administrative law judge erred in relying on *Warth* to support his finding at Section 718.202(a)(4). *See Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); Employer's Exhibit 1.

Additionally, although the administrative law judge considered Dr. Hippensteel's opinion to be insufficiently reasoned with regard to the existence of pneumoconiosis, he did not undertake an analysis of whether claimant's experts had offered reasoned and documented opinions to support a finding of pneumoconiosis under Section 718.202(a)(4).[9] The record reflects that there is discrepancy between the number of years of coal mine employment, as determined by the administrative law judge, and the work histories that were recorded by Drs. Forehand and Rasmussen.[10] There was also a

[9] Employer correctly notes that while Dr. Forehand stated in his supplemental report that he based his diagnosis of clinical pneumoconiosis on the presence of respiratory crackles, he did not mention respiratory crackles as a physical finding in his original examination report. Director's Exhibits 11, 13; Employer's Brief at 9. On remand, the administrative law judge should further assess the probative value of Dr. Forehand's diagnosis of pneumoconiosis based on this discrepancy. Additionally, because Dr. Cardona did not provide any explanation for his diagnosis of coal worker' pneumoconiosis or chronic obstructive pulmonary disease, the administrative law judge should reconsider whether Dr. Cardona's opinion is reasoned, and whether it is entitled to any probative weight. S*ee Clark v. Karst-Robins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Director's Exhibit 1.

[10] Although the administrative law judge specifically determined that claimant worked fifteen years in coal mine employment, Dr. Forehand relied on a work history of eighteen years in reaching his diagnosis of pneumoconiosis. More significantly, Dr. Rasmussen reported that claimant worked twenty-seven years in coal mine employment,

variation of smoking histories recorded by the physicians of record. S*ee Clark v. Karst-Robins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 20. Yet, in summarily crediting claimant's experts over Dr. Hippensteel, the administrative law judge notes only that "the differences in coal mine exposure and smoking histories established and that relied upon by these experts do not greatly diminish the probative value of the opinions offered in support of this claim." Decision and Order at 20. This type of summary finding fails to adequately resolve the conflict in the medical opinion evidence, and fails to comport with the APA, 5 U.S.C. §557(c)(3)(A). *See Collins v. J & L Steel*, 21 BLR 1-181 (1999).

Moreover, in discussing Dr. Hippensteel's opinion at Section 718.202(a)(4), the administrative law judge improperly shifted the burden to employer to disprove that claimant suffers from pneumoconiosis.[11] Contrary to the administrative law judge's finding, claimant is not entitled to a presumption that he had pneumoconiosis simply because he has established fifteen years of coal mine employment. Claimant bears the burden of establishing all of the requisite elements of entitlement, including the existence of pneumoconiosis, by a preponderance of the evidence.[12] *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*). Consequently, we vacate the administrative law judge's finding that claimant established the existence of pneumoconiosis at Section 718.202(a)(4). On remand, the administrative law judge must evaluate the medical opinion evidence at Section 718.202(a)(4) to determine whether there is a reasoned and documented medical opinion sufficient to

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and thus, the doctor based his diagnosis of clinical pneumoconiosis on a work history that inflated claimant's coal mine dust exposure by thirteen years. Claimant's Exhibit 1.

[11] The administrative law judge stated that, "[w]hile the opinions of Drs. Forehand and Rasmussen may be somewhat flawed, *their forthright attribution* of [c]laimant's pulmonary or respiratory disease to coal mine dust is persuasive [emphasis added]." Decision and Order at 20. However, it was improper for the administrative law judge to suggest that Dr. Hippensteel had not offered a "forthright" opinion merely because the doctor disagreed with claimant's experts that coal dust exposure was a causative factor for claimant's respiratory condition.

[12] In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986) (*en banc*). 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*).

establish that claimant suffers from either clinical or legal pneumoconiosis. If so, he must weigh all of the conflicting medical opinion evidence to determine whether claimant satisfied his burden of establishing the existence of pneumoconiosis under Section 718.202(a)(4).

Because the administrative law judge's determination as to the existence of pneumoconiosis bears on his analysis of the issue of disability causation, we must vacate the administrative law judge's finding that claimant established total disability due to pneumoconiosis under 20 C.F.R. §718.204(c). We also agree with employer, that in weighing the conflicting medical opinions, relevant to the issue of disability causation, the administrative law judge erred when he required Dr. Hippensteel to rule out coal dust exposure as a contributing factor to claimant's respiratory impairment, but did not consider whether Dr. Rasmussen's opinion had taken into account claimant's heart disease as a possible cause for his respiratory disability. Employer's Brief at 9. On remand, if the issue of disability causation is reached, the administrative law judge must consider whether the physicians' opinions adequately address all of the potential risk factors for claimant's respiratory disability, including coal dust exposure, smoking, and his heart disease, in considering the weight to accord the conflicting medical evidence under 718.204(c). *See generally Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985).

Consequently, on remand, the administrative law judge should consider whether the evidence is sufficient to establish the existence of pneumoconiosis under either Section 718.202(a)(1) or (a)(4). Then, if necessary, the administrative law judge must weigh all of the evidence together to determine whether claimant established the existence of either clinical or legal pneumoconiosis, by a preponderance of evidence, pursuant to 20 C.F.R. §718.202(a). *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). The administrative law judge should also consider, if necessary, whether claimant has satisfied his burden of proof to establish disability causation under 20 C.F.R. §718.204(c). *See Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Toler v. Eastern Associated Coal Co.*, 43 F.3d 109; 19 BLR 2-70 (4th Cir. 1995).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge