BRB No. 12-0363 BLA

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| RODIE GALE VARNEY | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | DATE ISSUED: 04/24/2013 |
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| SCOTTS BRANCH COAL COMPANY | ) | |
| | ) | |
| Employer-Petitioner | ) | |
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| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order on Remand–Awarding Benefits of Robert B. Rae, Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for claimant.

Paul E. Jones and James W. Herald, III (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand–Awarding Benefits (08-BLA-5159) of Administrative Law Judge Robert B. Rae rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(the Act). This case involves claimant's second request for

modification of the denial of a subsequent claim originally filed on March 8, 2001, Director's Exhibit 2, and is before the Board for the second time.[1]

Initially, the administrative law judge credited claimant with eleven years of coal mine employment,[2] and found that the new evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Considering the merits, the administrative law judge found that claimant established that he is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a), 718.204(b),(c). Accordingly, the administrative law judge awarded benefits.

Upon review of employer's appeal, the Board held that, because the administrative law judge failed to make evidentiary rulings under 20 C.F.R. §725.414, the Board had no basis for review of his entitlement findings.[3] *Varney v. Scotts Branch Coal Co.*, BRB No. 09-0629 BLA, slip op. at 7 (Oct. 15, 2010)(unpub.). Therefore, the Board vacated the administrative law judge's findings pursuant to 20 C.F.R. §§725.309(d), 725.310, and on the merits pursuant to 20 C.F.R. §§718.202(a), 718.204(b), (c), and remanded the case for the administrative law judge to identify the admissible evidence and readjudicate claimant's entitlement to benefits. *Id*. Additionally, in the interest of judicial economy, the Board instructed the administrative law judge to make separate findings on each element of entitlement. *Varney*, slip op. at 8. Further, the Board instructed the administrative law judge to evaluate each medical opinion of record in light of its documentation and reasoning, and pursuant to the treating physician's opinion guidelines contained at 20 C.F.R. §718.104(d), where applicable. *Id*.

On remand, the administrative law judge made evidentiary rulings and readjudicated the claim. He found that the new x-ray evidence established the existence of clinical pneumoconiosis, and that the new medical opinion evidence established the

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[1] The full procedural history of the claim is set forth in the Board's prior decision. *Varney v. Scotts Branch Coal Co.*, BRB No. 09-0629 BLA, slip op. at 1-2 n.1 (Oct. 15, 2010)(unpub.).

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

[3] The Board affirmed the administrative law judge's preliminary determinations that the claim was timely filed, and that claimant's modification request was properly before him. *Varney*, slip op. at 4-5.

existence of clinical and legal pneumoconiosis[4] pursuant to 20 C.F.R. §718.202(a)(1), (4), and demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Considering the merits, the administrative law judge accorded greater weight to the more recent evidence submitted in the current claim, and found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b). The administrative law judge further found that claimant is totally disabled by a respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). Without specifically addressing whether the evidence established that claimant's total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in considering medical reports submitted by claimant in excess of the evidentiary limitations of 20 C.F.R. §725.414. Additionally, employer argues that the administrative law judge erred in his analysis of the new x-ray and medical opinion evidence when he found the existence of clinical and legal pneumoconiosis, and a change in an applicable condition of entitlement, established pursuant to 20 C.F.R. §§718.202(a), 725.309(d). On the merits, employer contends that the administrative law judge erred in his analysis of the blood gas study and medical opinion evidence when he found that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2). Finally, employer argues that the administrative law judge failed to determine whether claimant is totally disabled due to pneumoconiosis under 20 C.F.R. §718.204(c). Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The Board reviews the administrative law judge's procedural rulings for abuse of discretion. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(en banc).

[4] Clinical pneumoconiosis is a disease "characterized by [the] permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

## Evidentiary Rulings

Employer contends that, because 20 C.F.R. §725.310(b) permits a party to submit only one additional medical report on modification, the administrative law judge erred in admitting multiple reports that claimant submitted, from Dr. Forehand. Employer's Brief at 5-6. We disagree. As the Board explained in its prior decision, since this claim is being considered pursuant to claimant's second request for modification, it is governed by the combined evidentiary limitations of 20 C.F.R. §§725.414 and 725.310(b). *Varney*, slip op. at 6-7; *see Rose v. Buffalo Mining Co.*, 23 BLR 1-221, 1-227 (2007). Under those combined limitations, each party in this case may submit four affirmative medical reports: the two authorized under 20 C.F.R. §725.414(a), to the extent they were not submitted in the initial claim proceedings, and one additional report for each of the two modification requests, under 20 C.F.R. §725.310(b). *Varney*, slip op. at 6. Here, claimant designated, and the administrative law judge admitted, three affirmative medical reports: Dr. Forehand's March 2, 2004 medical report, Dr. Forehand's August 3, 2006 medical report with a March 5, 2007 supplement, and Dr. Fannin's August 13, 2002 medical report with supplemental reports.[5] Decision and Order on Remand at 11, 12; Administrative Law Judge's Exhibit 2. Dr. Forehand's October 15, 2003 "Progress Record" was properly admitted as a medical treatment record under 20 C.F.R. §725.414(a)(4). Detecting no abuse of discretion by the administrative law judge in his evidentiary rulings, *see Clark*, 12 BLR at 1-153, we affirm them.

## Entitlement

To establish entitlement to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because claimant did not establish any element of entitlement. Director's Exhibit 1 at 2. Consequently, to obtain review of the merits of his claim, claimant had to submit new

[5] Employer does not challenge the administrative law judge's admission of Dr. Fannin's report as an affirmative medical report, with supplemental reports that were based on Dr. Fannin's reviews of additional medical evidence. That ruling is therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

evidence establishing any element of entitlement. 20 C.F.R. §725.309(d)(2),(3). Additionally, because claimant requested modification of the denial of his subsequent claim for failure to satisfy the requirements of 20 C.F.R. §725.309(d), the issue before the administrative law judge was whether the new evidence submitted on modification, considered along with the evidence originally submitted in the subsequent claim, established a change in an applicable condition of entitlement. *See* 20 C.F.R. §725.309(d); *Hess v. Director, OWCP*, 21 BLR 1-141, 143 (1998).

**Pneumoconiosis**

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered eleven readings of six new x-rays, and considered the readers' radiological qualifications.[6] The administrative law judge found that the May 24, 2001, August 10, 2001, August 4, 2003, and September 29, 2004 x-rays were positive for pneumoconiosis, while the February 12, 2004 and June 20, 2006 x-rays were negative for pneumoconiosis. Decision and Order on Remand at 7-9. The administrative law judge concluded that the preponderance of the x-ray evidence, as interpreted by the physicians with superior qualifications, was positive for the existence of pneumoconiosis.

Employer does not challenge the administrative law judge's analysis of the individual x-rays to find that four of the x-rays were positive for pneumoconiosis and that two were negative. Rather, employer argues that the administrative law judge erred in finding that the preponderance of the x-ray evidence established pneumoconiosis, when

[6] Dr. Cappiello, a Board-certified radiologist and B reader, interpreted the May 24, 2001 x-ray as positive for pneumoconiosis, while Dr. Broudy, a B reader, interpreted the x-ray as negative for pneumoconiosis. Director's Exhibit 15 at 7; Claimant's Exhibit 4 at 2. Dr. Cappiello interpreted the August 10, 2001 x-ray as positive for pneumoconiosis, while Dr. Baker, a B reader, interpreted this x-ray as negative for pneumoconiosis. Director's Exhibit 11 at 1; Claimant's Exhibit 1 at 2. Dr. Cappiello interpreted the August 4, 2003 x-ray as positive for pneumoconiosis. Claimant's Exhibit 2 at 2. The February 12, 2004 x-ray was interpreted as positive for pneumoconiosis by Dr. Forehand, a B reader, and interpreted as negative for pneumoconiosis by Dr. Wheeler, a Board-certified radiologist and B reader. Director's Exhibit 48 at 2; Claimant's Exhibit 6 at 1. Dr. Cappiello interpreted the September 29, 2004 x-ray as positive for pneumoconiosis, while Dr. Broudy interpreted the x-ray as negative for pneumoconiosis. Director's Exhibit 49 at 6; Claimant's Exhibit 3 at 2. Finally, the June 20, 2006 x-ray was interpreted as positive for pneumoconiosis by Dr. Forehand, while Dr. Wheeler interpreted the x-ray as negative for pneumoconiosis. Director's Exhibit 69 at 61; Claimant's Exhibit 8 at 7.

"the weight of the three most recent x-rays is negative for pneumoconiosis."[7] Employer's Brief at 9-10.

We reject employer's argument. Employer essentially asks the Board to reweigh the evidence, which the Board is not authorized to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). As the administrative law judge based his finding on a proper qualitative analysis of all of the relevant x-ray evidence, we affirm, as supported by substantial evidence, his finding that the preponderance of the new x-ray evidence established the existence of clinical pneumoconiosis. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White*, 23 BLR at 1-4-5.

Pursuant to 20 C.F.R. §718.202(a)(4),[8] the administrative law judge considered four new medical opinions. Dr. Baker, who examined claimant on behalf of the Department of Labor, opined that claimant does not have clinical pneumoconiosis, but suffers from mild obstruction, mild resting hypoxemia, and chronic bronchitis, all related to his coal mine dust exposure. Director's Exhibits 53 at 6, 7; 56 at 2-3; Employer's Exhibit 2. Dr. Forehand examined and tested claimant, and diagnosed him with "coal workers' pneumoconiosis," and arterial hypoxemia that is due to his coal workers' pneumoconiosis. Director's Exhibit 43; Claimant's Exhibits 8, 9. Dr. Fannin, who is claimant's treating physician, initially diagnosed claimant with "chronic COPD and coal workers' pneumoconiosis." Director's Exhibit 33. In two later reports, Dr. Fannin diagnosed claimant with "coal workers' pneumoconiosis," that causes him to have "cor pulmonale," with "right-sided heart failure due to pulmonary disease. . . ." Claimant's Exhibits 10, 11. In a final report, Dr. Fannin opined that claimant has legal pneumoconiosis, in the form of "ABG proven hypoxemia with exertional shortness of breath," significantly related to his coal mine dust exposure. Claimant's Exhibit 12 at 1-2.

[7] Employer argues that the weight of the three most recent x-rays is negative for pneumoconiosis because the February 12, 2004 x-ray was found to be negative for pneumoconiosis, the September 29, 2004 x-ray was found to be positive, and the June 20, 2006 x-ray was found to be negative. Employer's Brief at 9-10.

[8] The Sixth Circuit recently held that, although 20 C.F.R. §718.202(a) enumerates four distinct methods of establishing pneumoconiosis, all types of relevant evidence must be weighed together to determine whether claimant suffers from the disease. *Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881, 25 BLR 2-213, 2-218 (6th Cir. 2012). Therefore, we address employer's challenges to the administrative law judge's finding that the existence of pneumoconiosis was established by the medical opinion evidence under 20 C.F.R. §718.202(a)(4).

Dr. Broudy examined and tested claimant, and reviewed the reports of Drs. Forehand and Fannin. Dr. Broudy opined that claimant does not have clinical or legal pneumoconiosis, but has mild restriction on his pulmonary function study that is due to obesity and possibly submaximal effort on the study, mild resting hypoxemia, and chronic bronchitis, which is due to smoking. Director's Exhibits 35, 38, 49, 69; Employer's Exhibit 1.

The administrative law judge stated that he accorded "some weight" to Dr. Baker's opinion. Decision and Order at 14. Further, the administrative law judge discounted Dr. Forehand's opinion, because Dr. Forehand relied on his own positive readings of two x-rays that were interpreted as negative by a more highly qualified reader. Decision and Order at 11. The administrative law judge "g[a]ve Dr. Fannin's medical opinions controlling weight," because of Dr. Fannin's thirteen-year treatment relationship with claimant, and because Dr. Fannin's opinion was "well-reasoned and well-documented," and "consistent with [c]laimant's test results and symptoms in the record . . . ." Decision and Order at 12. The administrative law judge discounted Dr. Broudy's contrary opinion for several reasons, finding that it was not well-reasoned or well-documented.[9]

Employer contends that the administrative law judge erred in crediting Dr. Fannin's opinion as that of the treating physician without adequately explaining why he found that Dr. Fannin's opinion is reasoned and documented.[10] Employer's Brief at 10.

[9] The administrative law judge found that Dr. Broudy's opinion was not well-reasoned and documented, in part, because Dr. Broudy diagnosed claimant with chronic bronchitis due to smoking, when claimant consistently reported to the physicians of record that he never smoked. Decision and Order at 12 n.4, 13. The administrative law judge further discounted Dr. Broudy's opinion because he relied on his own negative x-ray readings, which the administrative law judge found to be outweighed by the positive readings of a more highly qualified reader. Decision and Order at 12 n.4. Further, the administrative law judge discounted Dr. Broudy's opinion because he did not explain how obesity would have caused or contributed to claimant's restriction on pulmonary function study, or explain how obesity would exclude pneumoconiosis as a diagnosis. Decision and Order at 14. Since employer does not challenge these credibility determinations, they are affirmed. *See Skrack*, 6 BLR at 1-711. Therefore, we need not address employer's arguments challenging other reasons the administrative law judge gave for discounting Dr. Broudy's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[10] Employer does not challenge the administrative law judge's analysis of the nature and quality of Dr. Fannin's treatment relationship with claimant under the factors

An administrative law judge must evaluate the opinions of treating physicians just as he considers those of other experts. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003); *see* 20 C.F.R. §718.104(d)(5). The determination of whether a medical opinion is reasoned and documented is a credibility matter for the administrative law judge to decide. *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Here, although the administrative law judge stated that Dr. Fannin's opinion was well-reasoned and documented because it was "consistent with [c]laimant's test results and symptoms," the administrative law judge did not explain what test results, symptoms, or other medical data, either in Dr. Fannin's reports or in the record, supported Dr. Fannin's diagnosis of pneumoconiosis. Therefore, the Board is unable to determine whether substantial evidence supports the administrative law judge's finding that Dr. Fannin's opinion is reasoned and documented. *See Rowe*, 710 F. 2d at 255, 5 BLR at 2-103. Accordingly, we must vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(4), and remand this case for further consideration of whether the medical opinion evidence establishes the existence of pneumoconiosis. On remand, the administrative law judge must determine whether Dr. Fannin's opinion is reasoned and documented on the issue of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and set forth the basis for his determination.[11] 20 C.F.R. §718.104(d)(5); *see Rowe*, 710 F. 2d at 255, 5 BLR at 2-103.

Because we have vacated the administrative law judge's finding of the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(4), we further vacate his findings of the existence of pneumoconiosis under 20 C.F.R. §718.202(a), and a change in an applicable condition of entitlement under 20 C.F.R. §725.309(d). *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881, 25 BLR 2-213, 2-218 (6th Cir. 2012). On remand, the administrative law judge must weigh all types of relevant evidence together to determine whether claimant has established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Hensley*, 700 F.3d at 881, 25 BLR at 2-218.

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set forth at 20 C.F.R. §718.104(d)(1)-(4). *See Skrack*, 6 BLR at 1-711; Decision and Order at 12.

[11] To avoid any repetition of error on remand, we instruct the administrative law judge that, to the extent he relies on Dr. Baker's opinion at 20 C.F.R. §718.204(a)(4), he must address whether Dr. Baker's opinion is reasoned and documented. Further, to the extent the administrative law judge relies on Dr. Forehand's opinion, he should explain the weight he accords it in light of his decision to discount Dr. Forehand's opinion, as based on x-rays that were reread as negative by a more highly qualified reader.

**Total Disability**

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge found that none of the seven new pulmonary function studies was qualifying for total disability.[12] Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge found that, of the five new blood gas studies, two were qualifying, and three were non-qualifying.[13] The administrative law judge determined that the blood gas study evidence supported total disability, because "Dr. Forehand's [qualifying February 12, 2004 and June 20, 2006] results are in agreement with Dr. Fannin's finding of *cor pulmonale* and the weight of the medical opinion evidence which also support a finding of total respiratory or pulmonary disability." Decision and Order at 16.

Pursuant to 20 C.F.R. §718.204(b)(2)(iii), the administrative law judge found that Dr. Fannin's diagnosis of cor pulmonale with right-sided heart failure was supported by Dr. Fannin's discussion of the results of a January 11, 2007 echocardiogram demonstrating right ventricular dilation. Decision and Order at 17. The administrative law judge further found that Dr. Broudy did not disagree with Dr. Fannin's diagnosis but, rather, stated that the results of the January 11, 2007 echocardiogram could be indicative of cor pulmonale. *Id*. The administrative law judge concluded that the weight of the evidence established that claimant has cor pulmonale with right-sided congestive heart failure, and is totally disabled. *Id*.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the medical opinion evidence conflicted as to whether claimant is totally disabled. Drs. Forehand and Fannin opined that claimant is totally disabled, while Drs. Baker and Broudy opined that claimant has a mild degree of impairment and is not totally disabled. The administrative law judge did not make a finding as to whether the medical opinion evidence established total disability.

Employer contends that the administrative law judge erred in crediting the two qualifying blood gas studies over the three non-qualifying blood gas studies, because he did not explain his finding that the qualifying studies were "in agreement with" Dr. Fannin's diagnosis of cor pulmonale. Employer's Brief at 11. Employer also contends that the administrative law judge did not adequately explain why he found that the two

[12] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i),(ii).

[13] The February 12, 2004 and June 20, 2006 blood gas studies were qualifying, while the August 10, 2001, May 24, 2001, and September 29, 2004 blood gas studies were non-qualifying. Director's Exhibits 11, 15, 43, 49; Claimant's Exhibit 8.

qualifying blood gas studies were supported by the weight of the medical opinion evidence, when Drs. Baker and Broudy, both Board-certified pulmonary specialists, opined that claimant is not totally disabled. *Id*. Lastly, employer contends that the administrative law judge erred in finding total disability based on Dr. Fannin's diagnosis of cor pulmonale with right-sided heart failure, because Dr. Fannin did not explain "how the cor pulmonale, if any, is due to pneumoconiosis. *Id*. at 12.

We agree that substantial evidence does not support the administrative law judge's finding of total disability. Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge did not explain how he determined that the two qualifying blood gas studies were "in agreement with" Dr. Fannin's diagnosis of cor pulmonale. Further, because the administrative law judge did not address whether the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), his finding that the weight of the medical opinion evidence supported the two qualifying blood gas studies is unexplained. Therefore, the administrative law judge's decision does not satisfy the requirements of the Administrative Procedure Act (APA), which provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2).

Pursuant to 20 C.F.R. §718.204(b)(2)(iii), we reject employer's specific argument, that Dr. Fannin's diagnosis of cor pulmonale with right-sided heart failure is insufficient to support total disability, absent an explanation of how the cor pulmonale is due to pneumoconiosis.[14] We must vacate the administrative law judge's finding however, because, as discussed above, we have vacated his finding of the existence of pneumoconiosis. To establish total disability under 20 C.F.R. §718.204(b)(2)(iii), claimant must both "ha[ve] pneumoconiosis," and establish cor pulmonale with right-sided congestive heart failure.

In light of the foregoing, we vacate the administrative law judge's finding of total disability pursuant to 20 C.F.R. §718.204(b)(2). On remand, the administrative law judge must reconsider whether the blood gas study evidence, the evidence regarding cor pulmonale with right-sided heart failure, and the medical opinion evidence, establish total

[14] The regulation provides that, in the absence of contrary probative evidence, the evidence "shall establish" total disability if "[t]he miner has pneumoconiosis and has been shown by the medical evidence to be suffering from cor pulmonale with right-sided congestive heart failure." 20 C.F.R. §718.204(b)(2)(iii).

disability pursuant to 20 C.F.R. §718.204(b)(2)(ii)-(iv).[15] On remand, when considering whether the medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103. If the administrative law judge finds that the evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii),(iii), or (iv), he must weigh all the relevant evidence together to determine whether claimant has established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987).

**Disability Causation**

As employer contends, the administrative law judge did not determine whether the evidence establishes that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). If the issue is reached on remand, the administrative law judge must determine whether claimant has established that pneumoconiosis is a substantially contributing cause of his total disability pursuant to 20 C.F.R. §718.204(c). *See Tenn. Consol. Coal Co. v. Kirk*, 264 F.3d 602, 610-11, 22 BLR 2-288, 2-303 (6th Cir. 2001).

[15] The finding that the pulmonary function study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) is affirmed, as it is unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge