BRB No. 06-0786 BLA

ROGER LEE LAMBERT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 08/30/2007
	)	
and	)	
	)	
CONSOL ENERGY, INCORPORATED	)	
	)	
Employer/Carrier-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Derrick W. Lefler (Gibson, Lefler & Associates), Princeton, West Virginia, for claimant.

Ashley M. Harman (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

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

SMITH, Administrative Appeals Judge:

Employer appeals the Decision and Order Awarding Benefits (2005-BLA-5489) of Administrative Law Judge Alice M. Craft with respect to 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). The administrative law judge credited the claimant with thirty-one and one-half years of coal mine employment and considered the

claim, filed on April 21, 2004, pursuant to the regulations set forth in 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and was entitled to the presumption, set forth in 20 C.F.R. §718.203(b), that his pneumoconiosis arose out of coal mine employment. The administrative law judge further found that claimant established that he is totally disabled due to pneumoconiosis under 20 C.F.R. §718.204(b)(2), (c). Accordingly, benefits were awarded.

Employer argues on appeal that the administrative law judge did not properly weigh the evidence relevant to Sections 718.202(a)(4) and 718.204(c). Claimant has responded and urges affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has submitted a letter indicating that he will not file a brief in this appeal.[1]

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

In determining that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Mullins, Hippensteel, and Castle. Dr. Mullins examined claimant on July 20, 2004, and obtained a chest x-ray that was read as negative for pneumoconiosis, a pre-bronchodilator pulmonary function study that produced qualifying values, and nonqualifying resting and exercise blood gas studies.[2] Director's Exhibit 16; Claimant's Exhibit 1. Dr. Mullins diagnosed chronic obstructive pulmonary disease (COPD) and indicated that claimant is totally disabled by a moderate ventilatory impairment caused by "coal workers' pneumoconiosis." Director's Exhibit 16. Dr. Hippensteel examined claimant on October 12, 2004 and obtained a chest x-ray that was read as negative for

[1] We affirm the administrative law judge's findings that the existence of pneumoconiosis was not established under 20 C.F.R. §718.202(a)(1)-(3) and that total disability was established under 20 C.F.R. §718.204(b)(2), as they are not challenged on appeal. Decision and Order at 9, 10, 12; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711-12 (1983).

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

pneumoconiosis, a non-qualifying pre-bronchodilator pulmonary function study, a qualifying post-bronchodilator pulmonary function study, a resting blood gas study that produced non-qualifying results, and an EKG. Employer's Exhibits 1, 7. Dr. Hippensteel also reviewed claimant's medical records. Dr. Hippensteel opined that claimant does not have coal workers' pneumoconiosis, but is suffering from a totally disabling pulmonary impairment caused by bronchial asthma, which is unrelated to coal dust exposure. *Id*.; Employer's Exhibit 7 at 19-20. Dr. Castle examined claimant on February 22, 2005 and obtained a chest x-ray that was read as negative for pneumoconiosis, a qualifying pre-bronchodilator pulmonary function study, a non-qualifying post-bronchodilator pulmonary function study, a resting blood study that produced non-qualifying values, and an EKG. Employer's Exhibits 4, 6. Dr. Castle also reviewed claimant's medical records. Dr. Castle stated that claimant does not have coal workers' pneumoconiosis or any other coal dust related lung disease, but is suffering from bronchial asthma, which has created a totally disabling obstructive impairment. Employer's Exhibits 4, 6 at 12, 17.

The administrative law judge weighed these opinions under Section 718.202(a)(4) and determined that:

> [T]he medical opinion of Dr. Mullins is better explained and supported by the objective medical evidence than the reports and opinions of Drs. Hippensteel and Castle. Dr. Mullins' opinion in essence establishes that the Claimant has legal pneumoconiosis. Although both Dr. Hippensteel and Castle testified that they were familiar with the concept of legal pneumoconiosis, they offered no satisfactory explanation why they ruled it out, given that the Claimant's obstructive impairment was only reversible by 15%. The overwhelming impression given by their reports and testimony is that they focused on a diagnosis of clinical pneumoconiosis, placing great emphasis on the absence of positive x-rays or other evidence of interstitial disease. Dr. Mullins' opinion is more consistent with the premise underlying the Department of Labor regulations, that exposure to coal dust can cause obstructive lung disease.

Decision and Order at 11-12. The administrative law judge concluded, therefore, that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). *Id*. at 12.

Employer argues that the administrative law judge substituted her own opinion for that of the medical experts in discrediting the opinions of Drs. Hippensteel and Castle and improperly shifted the burden of proof to employer. Employer also asserts that the administrative law judge's finding that the opinions of Drs. Hippensteel and Castle are less consistent with the applicable regulations than the opinion of Dr. Mullins is not

adequately explained. Employer further maintains that the administrative law judge erred in failing to weigh all of the evidence relevant to Section 718.202(a) together in accordance with the decision of the United States Court of Appeals for the Fourth Circuit in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000).[3] These contentions have merit, in part.

The administrative law judge discredited the opinions of Drs. Hippensteel and Castle because they "offered no satisfactory explanation why they ruled [legal pneumoconiosis] out, given that the claimant's obstructive impairment was only reversible by 15%." Decision and Order at 12. The administrative law judge did not explain the basis for her analysis, *i.e.*, the significance of the degree of reversibility evidenced on claimant's post-bronchodilator pulmonary function studies. In addition, as employer further argues, the administrative law judge did not indicate that she had considered the statements in which Drs. Hippensteel and Castle explained that the degree of reversibility of claimant's obstructive impairment, the variability of the pulmonary function study results, and the purely obstructive nature of claimant's impairment were consistent with a diagnosis of bronchial asthma that is not related to coal dust exposure. Employer's Exhibits 4 at 6, 5 at 2, 6 at 15, 18-19, 7 at 13-15. The administrative law judge also did not consider the evidence as to airway remodeling caused by untreated asthma, which can create an irreversible obstructive impairment. Director's Exhibit 16; Claimant's Exhibit 1 at 27-28; Employer's Exhibits 4, 6 at 18-19; Employer's Exhibit 7 at 9-10, 12-13, 17.

In addition, employer is correct in contending that the manner in which the administrative law judge rendered her finding suggests that she believed that employer was required to "rule out" coal workers' pneumoconiosis or coal dust exposure as a cause of claimant's obstructive impairment. Pursuant to the terms of 20 C.F.R. §§718.201(a)(2), (b) and 718.202(a), however, it is claimant's burden to prove that his obstructive impairment is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment."[4] 20 C.F.R. §§718.201(a)(2), (b), 718.202(a).

[3] Contrary to the administrative law judge's finding that this case arises with the jurisdiction of the United States Court of Appeals for the Third Circuit, *see* Decision and Order at 3, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. Director's Exhibit 4; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-201 (1989)(*en banc*) Although employer has corporate offices in Pennsylvania, *see* Director's Exhibit 5, claimant worked in coal mines located in Virginia and West Virginia. Director's Exhibit 4.

[4] Under 20 C.F.R. §718.201(a), "clinical pneumoconiosis" is defined as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the

Because the administrative law judge did not fully address the relevant evidence and did not place the burden of proof upon claimant, we must vacate her finding that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Hall v. Director, OWCP*, 12 BLR 1-80 (1988).

Employer is also correct in arguing that the administrative law judge did not adequately set forth her rationale for determining that the opinions of Drs. Hippensteel and Castle are less consistent with the definition of legal pneumoconiosis than the opinion of Dr. Mullins. As employer maintains, the administrative law judge did not identify the portions of the opinions of Drs. Hippensteel and Castle that led her to conclude that they "plac[ed] great emphasis on the absence of positive x-rays or other evidence of interstitial disease." Decision and Order at 12. Moreover, a review of these opinions indicates that Drs. Hippensteel and Castle referred in large part to claimant's pulmonary function studies and blood gas studies in support of their diagnosis of asthma that was not related to coal dust exposure. *See* Employer's Exhibits 4 at 6, 5 at 2, 6 at 15, 18, 7 at 13-15. The administrative law judge's determination that Dr. Mullins's opinion is more in accord with the definition of legal pneumoconiosis is also not fully explained in light of Dr. Mullins's consistent references to "CWP," an acronym for coal workers' pneumoconiosis, as a contributing cause of claimant's obstructive impairment. Director's Exhibit 12; Claimant's Exhibit 1 at 13. "Coal workers' pneumoconiosis" is identified in Section 718.201(a)(1) as synonymous with clinical pneumoconiosis.

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), requires an administrative law judge to provide an explanation for his or her findings of fact and conclusions of law. Because the administrative law judge did not adequately explain her findings regarding the opinions of Drs. Hippensteel and Castle and did not address the ambiguous diagnosis of pneumoconiosis present in Dr. Mullins's opinion, we must vacate her findings with respect to these opinions. *Wojtowicz*, 12 BLR at 1-165; *see also Hall*, 12 BLR at 1-82. In addition, because the administrative law judge's determination

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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 is defined as "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The term "arising out of coal mine employment" denotes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

that claimant was entitled to the presumption that his pneumoconiosis arose out of coal mine employment, pursuant to Section 718.203(b), was premised upon the administrative law judge's consideration of the evidence under Section 718.202(a)(4), we also vacate this finding.

On remand, the administrative law judge must reconsider whether the medical opinions of record are sufficient to establish the existence of clinical and/or legal pneumoconiosis pursuant to Section 718.202(a)(4), being mindful of the distinctions drawn between these conditions and those in Section 718.201(a)(1), (2). If the administrative law judge determines that claimant has established the existence of pneumoconiosis pursuant to Section 718.202(a)(4), she must weigh the evidence supportive of this finding against the x-ray evidence relevant to Section 718.202(a)(1), and other relevant evidence, to determine whether a preponderance of all of the evidence establishes the existence of pneumoconiosis. *Compton*, 211 F.3d at 211-12, 22 BLR at 2-175. If the administrative law judge finds that claimant has established the existence of pneumoconiosis by a preponderance of all of the evidence, she must consider whether claimant has established that his pneumoconiosis arose out of coal mine employment under Section 718.203.

With respect to Section 718.204(c), employer argues that the administrative law judge's finding that claimant established that he is totally disabled due to pneumoconiosis is in error, as the administrative law judge relied upon her flawed weighing of the medical opinions under Section 718.202(a)(4). Employer is correct, as the administrative law judge credited Dr. Mullins's opinion based upon her findings under Section 718.202(a)(4) and determined that the opinions of Drs. Hippensteel and Castle were entitled to little weight because they did not diagnose pneumoconiosis.[5] Decision and Order at 12. We vacate, therefore, the administrative law judge's determination that Dr. Mullins's opinion is sufficient to establish that legal pneumoconiosis is a contributing cause of claimant's totally disabling pulmonary impairment pursuant to Section

[5] On remand, the administrative law judge may credit an opinion regarding the issue of total disability causation if the physician's opinion is not in direct contradiction to the administrative law judge's finding that claimant suffers from pneumoconiosis arising out of his coal mine employment. *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). If, however, the physician opines that claimant does not have legal or clinical pneumoconiosis, did not diagnose any condition aggravated by coal dust, and found no symptoms related to coal dust exposure, the administrative law judge cannot give weight to that opinion unless she provides specific and persuasive reasons for doing so, and those opinions "could carry little weight, at the most." *Scott*, 289 F.3d at 269, 22 BLR at 2-383.

718.204(c). On remand, if the administrative law judge finds that claimant has established the existence of pneumoconiosis under Section 718.202(a), she must reconsider whether claimant has established total disability due to pneumoconiosis at Section 718.204(c).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits in the Miner's Claim, Denying Benefits in the Survivor's Claim is affirmed in part and vacated in part and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

I concur:

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JUDITH S. BOGGS
Administrative Appeals Judge

McGRANERY, J., dissenting:

I respectfully dissent from the majority's determination to vacate the administrative law judge's decision awarding benefits and to remand the case for reconsideration of the medical evidence regarding the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and causation of total disability pursuant to 20 C.F.R. §718.204(c). I would affirm the administrative law judge's determination to credit Dr. Mullins's opinion that claimant's totally disabling respiratory impairment is due to both asthma and coal dust exposure, over the opinions of Dr. Castle and Hippensteel that claimant's totally disabling respiratory impairment is due to asthma, unrelated to coal dust exposure. A careful reading of the administrative law judge's decision reveals that the majority has mistakenly concluded: that the administrative law judge did not fully address the opinions of Drs. Castle and Hippensteel; that the administrative law judge did not explain her finding that these opinions are inconsistent with the definition of legal pneumoconiosis; that the administrative law judge

misallocated the burden of proof; and that the administrative law judge erred in discrediting the opinions of Drs. Castle and Hippensteel on causation.

The majority asserts that the administrative law judge did not support her determinations that Drs. Castle and Hippensteel "offered *no satisfactory* explanation why they ruled [legal pneumoconiosis] out, given that the claimant's obstructive impairment was only reversible by 15%." Decision and Order at 11 (emphasis added). A review of the record makes plain that the administrative law judge's analysis was predicated on Dr. Mullins's testimony that if claimant's impairment were due entirely to asthma, the bronchodilator should have improved claimant's pulmonary function from 58% to 80%, which is normal.

Nevertheless, the majority insists that the administrative law judge's finding did not reflect sufficient consideration of the opinions of Drs. Castle and Hippensteel:

> [T]he administrative law judge did not indicate that she had considered the statements in which Drs. Hippensteel and Castle explained that the degree of reversibility of claimant's obstructive impairment, the variability of the pulmonary function study results, and the purely obstructive nature of claimant's impairment were consistent with a diagnosis of bronchial asthma that is not related to coal dust exposure. Employer's Exhibits 4 at 6, 5 at 2, 6 at 15, 18-19, 7 at 13-15. The administrative law judge also did not specifically address Dr. Castle's explanation that the lack of aggressive treatment of claimant's asthma had rendered much of his obstructive impairment irreversible. Employer's Exhibit 6 at 18-19.

Slip op. at 4. There was no need for the administrative law judge to discuss the degree of reversibility and the variability of the pulmonary function studies because they are diagnostic of asthma, which was not in dispute. The only question was whether the irreversible component of the impairment is due to coal mine employment, as Dr. Mullins opined.

Contrary to the majority's assertions, the administrative law judge addressed Dr. Castle's view that the purely obstructive nature of claimant's impairment was indicative of asthma, unrelated to coal dust exposure. In his opinion dated March 17, 2005, Dr. Castle had stated:

> When coal mine dust exposure and coal workers' pneumoconiosis cause impairment, it generally does so by causing a mixed, irreversible obstructive and restrictive ventilatory defect. That was not the finding in this case.

Employer's Exhibit 4 at 7. The administrative law judge pointed out that this view is inconsistent with the premise of the revised regulations, as explained by the Department of Labor: "That coal dust exposure can cause obstructive lung disease is now a well-documented fact." Decision and Order at 12 quoting 65 Fed. Reg. at 79943. Accordingly, in the revised regulations, the definition of legal pneumoconiosis "includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). Since Dr. Castle ruled out coal mine employment as the cause of the irreversible component of claimant's impairment, based upon the purely obstructive nature of the impairment, the administrative law judge was correct in finding that Dr. Mullins better understood the concept of legal pneumoconiosis than did Dr. Castle. Decision and Order at 11-12.[6]

In his report, Dr. Castle supported his conclusion that claimant's impairment was due to asthma, unrelated to coal mine employment, by citing indicators of asthma, the absence of a positive x-ray evidence and the absence of interstitial disease, in addition to the absence of a restrictive impairment. Employer's Exhibit 4 at 6-7. Similarly, Dr. Hippensteel cited an x-ray, which was negative for pneumoconiosis, and opined that he believed claimant's bronchitis was unrelated to coal mine employment "since this is occurring in an active way long [more than two years] after he had left work in the mines, and that is not typical for industrial bronchitis in coal miners." Employer's Exhibit 7 at 18-19.

The administrative law judge concluded that Drs. Castle and Hippensteel relied on the absence of evidence of clinical pneumoconiosis to rule out coal dust exposure as

[6] The majority questions the administrative law judge's finding that Dr. Mullins's opinion reflects a better understanding of legal pneumoconiosis, that is, that coal dust exposure in coal mine employment may cause or aggravate an obstructive lung impairment, notwithstanding the absence of evidence of clinical pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2), (b). Citing Dr. Mullins's reference to claimant's pneumoconiosis as "CWP," an acronym for coal workers' pneumoconiosis, the majority considers Dr. Mullins's opinion to be ambiguous because the regulations state that coal workers' pneumoconiosis is encompassed by the definition of clinical pneumoconiosis at 20 C.F.R. §718.201(a)(1). It is noteworthy that the majority's uncertainty about Dr. Mullins's testimony is not shared by either the administrative law judge or employer. *E.g.*, employer states: "In matters such as Mr. Lambert's where the physicians agree clinical pneumoconiosis is not present….." Employer's Brief at 14. Employer understands that Dr. Mullins offered a medical opinion, not a legal opinion, and that her opinion is that claimant's obstructive impairment is due, in part, to coal dust exposure in coal mine employment.

significantly contributing to, or aggravating, claimant's obstructive impairment. She stated: "The overwhelming impression given by reports and testimony is that they focused on a diagnosis of clinical pneumoconiosis, placing great emphasis on the absence of positive x-ray or other evidence of interstitial disease." Decision and Order at 11-12. As a result, she held that these doctors' opinions are inconsistent with the Department's positions reflected in the revised regulations: "That coal dust exposure may induce obstructive lung disease even in the absence of fibrosis or complicated pneumoconiosis." Decision and Order at 12. The law is clear that the administrative law judge has broad discretion in assessing the credibility of conflicting witnesses. *See Doss v. Director*, OWCP, 53 F.3d 654, 19 BLR 2-181 (4th Cir. 1995). Furthermore, "a reviewing court has no license to 'set aside an inference merely because it finds the opposite conclusion more reasonable or because it questions the factual basis'."[7] *Piney Mountain Coal Company v. Mays*, 176 F.3d 753, 756, 21 BLR 2-587, 2-591 (4th Cir. 1999), quoting *Doss*, 53 F.3d at 659, 19 BLR at 2-183 (emphasis added).

The majority believes that the administrative law judge decided to credit Dr. Mullins's theory of the cause of the irreversible component of claimant's impairment without adequately considering employer's alternative theory. Dr. Castle, like Dr. Hippensteel, explained how asthma can develop, "over time," into a fixed airways obstruction, but neither doctor propounded this diagnosis of claimant in either a report or testimony. Employer's Exhibit 6 at 16-17; Employer's Exhibit 7 at 18-19. Employer's counsel cross-examined Dr. Mullins on the subject, pointing out that evidence in the record showed that claimant had complained of wheezing since 1978. The doctor confirmed that untreated asthma can cause a fixed obstruction, but she observed that in 1978 claimant was thirty years old and when she had seen such a development, it was in people who had been asthmatic since childhood, not middle-age. Claimant's Exhibit 1 at 28. Employer submitted no evidence to dispute this statement. Moreover, there was no evidence in the record to indicate that claimant had been a childhood asthmatic. Claimant's Exhibit 1 at 29. Thus, there was no evidence in the record to support employer's theory that the irreversible component of claimant's impairment was due to asthma, and there was abundant evidence in the record to support claimant's theory that the irreversible component was due to coal dust exposure, *i.e.*, a history of thirty-one years of coal mine employment.

[7] The administrative law judge could have discounted Dr. Hippensteel's opinion for another reason: he excluded coal mine employment as a factor contributing to claimant's bronchitis on the ground that claimant had left coal mine work more than two years earlier. *See* 20 C.F.R. §718.201(c)("[P]neumoconiosis is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal dust exposure.").

Employer has distorted the administrative law judge's decision to persuade the majority that the administrative law judge misallocated the burden of proof. The administrative law judge found that claimant had presented persuasive evidence that he suffers from legal pneumoconiosis based on Dr. Mullins's opinion as provided in a written report and deposition testimony. Dr. Mullins is Board-certified in internal and pulmonary medicine. She had conducted a physical examination, recorded symptoms, obtained a chest x-ray, conducted pulmonary function and blood gas studies, recorded relevant employment, smoking and social histories. She opined that claimant's obstructive impairment was due to asthma and coal mine employment. She testified that if claimant's pulmonary function had corrected post-bronchodilator from 58% to normal, which is 80%, she would agree that the impairment was "all asthma", but because it does not correct that much, she stated there must be a "fixed nonreversible component.…" Claimant's Exhibit 1 at 26. She concluded that the cause of that component must be claimant's thirty-one years of coal dust exposure because claimant's smoking history is insufficient to have such an impact. *Id*. It was entirely reasonable for the administrative law judge to find Dr. Mullins's diagnosis of legal pneumoconiosis documented and reasoned and therefore sufficient to carry claimant's burden of proof at 20 C.F.R. §718.202(a)(4).

Once claimant had provided credible evidence of the existence of legal pneumoconiosis, the issue for the administrative law judge became whether the medical opinion evidence affirming the existence of legal pneumoconiosis was more credible than the medical evidence denying the existence of legal pneumoconiosis. As a result, the administrative law judge had to analyze the credibility of the opinions of Drs. Castle and Hippensteel that claimant did not have legal pneumoconiosis. The administrative law judge's analysis was entirely correct and in no way shifted the burden of proof. Employer's argument is nothing more than an effort to evade the administrative law judge's scrutiny of its medical evidence.

Finally, I disagree with the majority's determination that the administrative law judge erred in finding that the opinions of Drs. Castle and Hippensteel were entitled to little weight because they did not diagnose pneumoconiosis. The opinions at issue in the case at bar are like the opinions of Drs. Castle and Dahhan at issue in *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002). In *Scott*, Drs. Castle and Dahhan had opined that the miner did not have clinical or legal pneumoconiosis; they did not diagnose any condition related to coal dust exposure; and found no symptoms related to coal dust. Because their opinions directly contradicted the administrative law judge's finding of pneumoconiosis, the court held that the "ALJ could only give weight to those opinions if he provided specific and persuasive reasons for doing so, and those opinions could carry little weight at the most." *Id*. at 289 F.3d at 269, 22 BLR at 2-383. *Scott* makes clear that the administrative law judge did not err in discounting the opinions of Drs. Castle and Hippensteel on causation.

Accordingly, I believe that the administrative law judge properly weighed the medical opinion evidence and that her decision awarding benefits should be affirmed.

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REGINA C. McGRANERY
Administrative Appeals Judge