BRB No. 10-0697 BLA

WILLIAM A. YOUNG	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
APOGEE COAL COMPANY/ARCH OF ILLINOIS	)	DATE ISSUED: 08/25/2011
	)	
and	)	
	)	
ARCH COAL, INCORPORATED	)	
	)	
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 on Remand of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Laura Metcoff Klaus (Greenberg Traurig), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits on Remand (2004-BLA-06288) of Administrative Law Judge William S. Colwell rendered on a claim filed on February 25, 2003, pursuant to the provisions of Title IV of the Black Lung Benefits

Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act).[1] This case is before the Board for the second time. In a Decision and Order dated April 29, 2008, the administrative law judge credited claimant with twenty-eight years and six months of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2), but failed to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

In response to claimant's appeal, the Board affirmed the administrative law judge's exclusion of Dr. Tippy's March 4, 2003 letter because it did not satisfy the criteria set forth at 20 C.F.R. §725.414(a)(4). *W.A.Y.* [*Young*] *v. Apogee Coal Co./Arch of Illinois*, BRB No. 08-0643 BLA, slip op. at 3 (June 30, 2009)(unpub.). The Board also rejected claimant's argument that the administrative law judge improperly excluded Dr. Tuteur's May 26, 2004 report and Dr. Tippy's treatment records dated from July 30, 2004 to May 18, 2006. *W.A.Y.* [*Young*], BRB No. 08-0643 BLA, slip op. at 4-6. The Board additionally held that the administrative law judge's error, if any, in allowing the admission of five medical journal articles that were submitted by employer was harmless, as the administrative law judge did not refer to this evidence in any part of his decision. *W.A.Y.* [*Young*], BRB No. 08-0643 BLA, slip op. at 7. However, the Board reversed the administrative law judge's ruling that claimant had to designate Dr. Houser's supplemental report as one of his affirmative case medical reports, and remanded the case for the administrative law judge to allow claimant to designate a second affirmative case medical report under Section 725.414(a)(2)(i). *W.A.Y.* [*Young*], BRB No. 08-0643 BLA, slip op. at 8-9. The Board therefore vacated the administrative law judge's denial of benefits, and instructed the administrative law judge to reconsider his findings at Sections 718.202(a)(4) and 718.204(c), as consideration of another affirmative case medical report could alter those findings with respect to entitlement. *W.A.Y.* [*Young*], BRB No. 08-0643 BLA, slip op. at 9.

[1] On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that the miner is totally disabled due to pneumoconiosis, if fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established. Because the instant claim was filed before January 1, 2005, the recent amendments to the Act do not apply in this case.

Further, in the interest of judicial economy, the Board affirmed the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3) and that the evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2). *W.A.Y.* [*Young*], BRB No. 08-0643 BLA, slip op. at 2 n.1, 10. However, the Board vacated the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) and remanded the case for further consideration thereunder. *W.A.Y.* [*Young*], BRB No. 08-0643 BLA, slip op. at 9, 12-19. In addition, the Board vacated the administrative law judge's finding that the evidence did not establish that claimant's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c) and remanded the case for further consideration of the evidence thereunder, if reached. *W.A.Y.* [*Young*], BRB No. 08-0643 BLA, slip op. at 9, 19.

On remand, while the administrative law judge found that the medical opinion evidence did not establish the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4), he found that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge also found that the evidence established total disability due to pneumoconiosis at 20 C.F.R §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.[2] 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).

To be entitled 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. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit, as claimant was employed in the coal mining industry in Illinois. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

Employer contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the opinions of Drs. Renn,[3] Cohen,[4] Houser,[5] and Tippy,[6] as well as claimant's medical records.[7] Dr. Renn opined that claimant does not have legal pneumoconiosis. By contrast, Drs. Cohen, Houser, and Tippy opined that claimant has legal pneumoconiosis. The administrative law judge gave greater weight to Dr. Cohen's opinion than to Dr. Renn's contrary opinion because he found that Dr. Cohen's opinion was better reasoned and documented. The administrative law judge also found that Dr. Cohen's qualifications were superior to those of Dr. Renn. In addition, the administrative law judge found that Dr. Cohen's opinion was supported by the opinions of Dr. Houser and claimant's treating physicians, including Dr. Tippy.

[3] In a consultation report dated November 25, 2004, Dr. Renn opined that claimant has allergic asthma and chronic hypoxemia that were not caused or aggravated by his exposure to coal mine dust. Employer's Exhibit 6. Dr. Renn also opined that claimant's disabling respiratory impairment was caused by his allergic asthma and hypoxemia. *Id*. Further, during a deposition dated June 19, 2006, Dr. Renn opined that claimant's totally disabling asthma was not related to coal dust exposure. Employer's Exhibit 9 at 28-31. Dr. Renn also opined that claimant does not have chronic obstructive pulmonary disease (COPD) due to coal mine dust. *Id*. at 82-85.

[4] In a consultation report dated November 22, 2005, Dr. Cohen opined that claimant has chronic lung disease related to coal dust exposure. Claimant's Exhibit 7. Dr. Cohen also opined that clamant does not have asthma. *Id*. Further, Dr. Cohen stated that the presence of eosinophils in claimant's blood does not rule out coal mine dust as a contributing cause of his impairment because eosinophils are seen in patients with COPD. *Id*.

[5] In a report dated August 13, 2003 and a supplemental report dated November 24, 2005, based on a July 21, 2003 examination, Dr. Houser opined that claimant has COPD related to coal dust exposure. Director's Exhibit 7; Claimant's Exhibits 6, 9.

[6] In a letter dated March 4, 2003, Dr. Tippy indicated that he has treated claimant since 1978 and stated that claimant was diagnosed in 1988 with "asthma and reactive airway disease, both of which were probably a result of exposure to rock and coal dust." Director's Exhibit 6. Dr. Tippy opined that claimant's chronic lung disease was related to coal dust exposure. *Id*.

[7] The record contains the hospital and treatment records of Drs. Smaga, Dave, and Gibbs from November 1, 2000 to March 11, 2002. Director's Exhibit 6.

Hence, the administrative law judge found that Dr. Cohen's opinion outweighed Dr. Renn's contrary opinion.

Employer initially asserts that the administrative law judge's decision represents an unexplained "about-face" because he weighed and credited the medical opinion evidence of record differently on remand than in his initial decision. As discussed *supra*, the Board vacated the administrative law judge's findings under 20 C.F.R. §§718.202(a)(4) and 718.204(c), and remanded the case for reconsideration and analysis of all of the relevant evidence thereunder. Because the Board's decision returned the parties to the *status quo ante*, *Director, OWCP v. Wilder Coal Co*., 8 BLR 1-119 (1985), the administrative law judge properly reconsidered the evidence on these issues and rendered relevant findings. Thus, we reject employer's assertion that the administrative law judge's decision represents an unexplained "about-face" because he weighed and credited the medical opinion evidence of record differently on remand than in his initial decision.

Employer next asserts that the administrative law judge erred in discounting Dr. Renn's opinion. Specifically, employer argues the administrative law judge erred in finding that Dr. Renn's diagnosis of "allergic asthma" was not supported by the treatment records. Employer's Brief at 11. Employer maintains that the treatment records admitted into the record do not contradict Dr. Renn's opinion.

Contrary to employer's assertion, the treatment note of Dr. Smaga and the March 4, 2003 report of Dr. Tippy,[8] claimant's treating physician, contradict Dr. Renn's opinion. As discussed *supra*, Dr. Renn diagnosed "allergic asthma." Employer's Exhibits 6, 9. By contrast, Dr. Smaga noted that claimant has a history of industrial asthma. Director's Exhibit 6. Similarly, Dr. Tippy noted that "[claimant] began having difficulty breathing in 1980 and in 1988 was diagnosed with asthma and restrictive airways disease, both of which were probably a result of exposure to rock and coal dust." *Id*. Additionally, Dr. Cohen explained that the fact that claimant's obstructive lung disease demonstrated a reversible component did not indicate that he has asthma unrelated to his extensive exposure to coal mine dust. Claimant's Exhibit 7 at 14-15. At Section 718.202(a)(4), the administrative law judge found that Dr. Renn's opinion that claimant has "allergic

[8] As discussed *supra*, in its Decision and Order, the Board affirmed the administrative law judge's exclusion of Dr. Tippy's March 4, 2003 letter and his *updated* treatment records. Specifically, the Board excluded treatment records dating from July 30, 2004 to May 18, 2006, which also contained Dr. Tuteur's May 26, 2004 report. *W.A.Y.* [*Young*] *v. Apogee Coal Co./Arch of Illinois*, BRB No. 08-0643 BLA, slip op. at 4-6 (June 30, 2009)(unpub.). However, on remand, the administrative law judge admitted Dr. Tippy's March 4, 2003 letter into the record. Decision and Order on Remand at 2.

asthma" was insufficiently reasoned and documented.[9] Decision and Order on Remand at 16.

It is within the administrative law judge's discretion, as finder-of-fact, to weigh the evidence, draw inferences and determine credibility. *See Amax Coal Co. v. Burns*, 855 F.2d 499 (7th Cir. 1988). The administrative law judge stated that, "[w]hile [claimant's] treating physicians and other examining physicians note the presence of an asthmatic component to his chronic lung disease, they do not conclude that [he] developed asthma as the result of his environmental exposures *outside* of his coal mining employment." *Id*. at 16-17 (emphasis in original). The administrative law judge further noted that these physicians concluded that the asthmatic component of claimant's lung disease developed as a consequence of his occupational exposures in the mines. Because substantial evidence supports the administrative law judge's credibility determinations in weighing the conflicting medical opinions on the cause of claimant's asthma, *Stephens*, 298 F.3d at 522, 22 BLR at 2-512; *Groves*, 277 F.3d at 836, 22 BLR at 2-325; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103, we reject employer's assertion that the administrative law judge erred in finding that Dr. Renn's diagnosis of "allergic asthma" was not supported by the treatment records.

Employer additionally asserts that the administrative law judge ignored the medical bases for Dr. Renn's opinion. Contrary to employer's assertion, the administrative law judge specifically considered the premises of Dr. Renn's opinion that claimant has "allergic asthma."[10] The administrative law judge stated:

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[9] As the Board previously noted, none of the treatment records contained an opinion that claimant's asthma was not related to coal dust exposure. Moreover, the Board affirmed the administrative law judge's rejection of Dr. Repsher's opinion, that claimant's asthma was not related to coal dust exposure, because of inconsistencies in it and because it was contrary to the comments to the regulations on the definition of legal pneumoconiosis. *Young*, BRB No. 08-0643 BLA, slip op. at 12-13 & n.9.

[10] During the June 19, 2006 deposition, Dr. Renn explained that claimant's lung volumes did not demonstrate a restrictive ventilatory defect, and that his remaining post-bronchodilator obstruction might be due to "remottling" of his airways caused by asthma. Employer's Exhibit 9 at 35-36, 44. Dr. Renn also explained that the presence of eosinophils in claimant's blood supports a diagnosis of an "allergic-type asthma," that coal mine dust exposure does not cause allergic asthma, and that claimant does not have COPD. *Id*. at 30-34. Dr. Renn further stated that the existence of a high level of eosinophils would not rule out any other pulmonary disease process, and that there could be coexisting asthma and COPD, but if there were COPD, he "would expect to see a different physiologic pattern" than shown in claimant. *Id*. at 58-59.

> Dr. Renn explains that coal mine dust "does not form a complete protein in the body" such that "the body doesn't develop an allergic reaction to it. He suggests that [c]laimant's asthma was not well-controlled and, over time, eosinphils (sic) in his blood were present and resulted in "remottling" of his lungs. Remottling, in turn, resulted in [c]laimant's obstructive lung disease that is partially, *not completely*, reversible. Dr. Renn states that [chronic obstructive pulmonary disease (COPD)] is comprised of two disease processes – emphysema and chronic bronchitis. He further posits that asthma is not a component of this disease. He concludes that coal dust exposure does not cause or aggravate an inflammatory reaction of the lungs like asthma.

Decision and Order on Remand at 17. The administrative law judge also noted that Dr. Renn cited to a 2005 medical journal article in support of his position that coal dust exposure did not cause claimant's asthma. Further, the administrative law judge stated that "Dr. Renn cites to the fact that [c]laimant left the mines in 1994 and his November 2000 ventilatory study did not demonstrate the presence of a lung disease, but the November 2003 study yielded findings typical of asthma." *Id*. at 20. Thus, we reject employer's assertion that the administrative law judge ignored the medical bases for Dr. Renn's opinion. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg*, 12 BLR at 1-79; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Employer further asserts that the administrative law judge erred in finding that Dr. Renn's opinion does not accord with the views expressed by the Department of Labor (the Department) in the preamble to the regulations.[11] Specifically, employer argues that the administrative law judge mischaracterized Dr. Renn's opinion as being at odds with the comments in the preamble. During a June 19, 2006 deposition, Dr. Renn gave an

[11] Employer asserts that the administrative law judge imposed "a presumption that all obstructive lung disease must be due to coal dust exposure and that any doctor who finds otherwise must be contrary to the Department's views." Employer's Brief at 14-15. Contrary to employer's assertion, the administrative law judge had discretion to consider the preamble to the revised regulations in assessing the credibility of the medical experts in this case. The administrative law judge did not treat the preamble as medical evidence, or as a presumption that all obstructive lung disease is pneumoconiosis; rather, he permissibly consulted the preamble as an authoritative statement of medical principles accepted by the Department. *See Lewis Coal Co. v. Director, OWCP* [*McCoy*], 373 F.3d 570, 578, 23 BLR 2-184, 2-190 (4th Cir. 2004); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009).

opinion on what he would expect to be different, if claimant had developed a lung disease related to coal mine dust. Employer's Exhibit 9 (Dr. Renn's Deposition at 44). Dr. Renn stated, "I would expect to see, in the absence of restriction, that the obstructive part of the lung volume study would be an elevation of the residual volume but not above 120 percent of predicted; whereas, his was up to 161 percent of predicted and previously had been up to 135 percent of predicted." *Id*. Dr. Renn also stated, "[o]f course, radiographically, I'd expect a preponderance of radiographic evidence to show opacities in the zones that are consistent with coal workers' pneumoconiosis." *Id*. The administrative law judge found that Dr. Renn's opinion was not in accord with the regulations and the Department's position in the preamble. In so finding, the administrative law judge stated that, "[i]n its preamble to the amended regulations, the Department finds that coal dust exposure can produce a disabling chronic obstructive lung disease, even in the absence of findings of restrictive lung disease or clinical pneumoconiosis, *i.e.*[,] x-ray correlation of the disease." Decision and Order on Remand at 19. Thus, the administrative law judge permissibly discounted Dr. Renn's opinion that coal mine dust did not contribute to claimant's asthma because it was inconsistent with the view accepted by the Department in the preamble to the revised regulations. *See* 65 Fed. Reg. 79920, 79939, 79944 (Dec. 20, 2000) (recognizing that the "term [COPD] includes . . . chronic bronchitis, emphysema and asthma," and that the overwhelming scientific and medical evidence demonstrates that coal mine dust exposure can cause obstructive lung disease); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009); Decision and Order on Remand at 10-11. Consequently, we reject employer's assertion that the administrative law judge mischaracterized Dr. Renn's opinion as being at odds with the comments in the preamble.

In addition, employer asserts that the administrative law judge erred in finding that Dr. Renn's opinion was contrary to the Department's view on the latency and progressivity of pneumoconiosis. The administrative law judge noted that Dr. Renn cited to the fact that, while claimant left the mines in 1994, claimant's November 2000 ventilatory study did not demonstrate the presence of a lung disease, but his November 2003 ventilatory study yielded findings typical of asthma. The administrative law judge then determined that, "[t]o the extent that Dr. Renn relies on the lapse of time from [claimant's] last exposure to coal dust in 1994 and the November 2003 study revealing asthma to conclude that [claimant's] lung disease is not coal dust related, then his opinion is premised on views contrary to the language of the regulations at 20 C.F.R. §718.201(c)('"pneumoconiosis" is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure[']). Decision and Order on Remand at 20. Thus, the administrative law judge rationally found that Dr. Renn's opinion was inconsistent with the premise underlying the amended regulations, which recognizes that pneumoconiosis may be latent and progressive, and "may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts & Schaefer*

Co. v. Director, OWCP [*Williams*], 400 F.3d 992, 999, 23 BLR 2-301, 2-318 (7th Cir. 2005); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 492, 23 BLR 2-18, 2-29 (7th Cir. 2004). Consequently, we reject employer's assertion that the administrative law judge erred in finding that Dr. Renn's opinion was contrary to the Department's view on the latency and progressivity of pneumoconiosis.

Employer also asserts that the administrative law judge erred in failing to provide a valid basis for finding that Dr. Renn's opinion was outweighed by Dr. Cohen's contrary opinion. Specifically, employer argues that the administrative law judge erred in applying different standards to the opinions of Drs. Renn and Cohen. Employer maintains that the administrative law judge imposed a heavier burden on Dr. Renn to support his opinion with medical articles than he imposed on Dr. Cohen. We agree.

The administrative law judge considered Dr. Renn's position that coal dust exposure does not cause or aggravate an inflammatory reaction of the lungs like asthma and asthma is not a component of COPD. The administrative law judge noted that, "[i]n support of this position, Dr. Renn cites to a 2005 published article in Volume 172 of the American Journal of Respiratory and Critical Care Medicine titled 'Occupational Asthma.'" Decision and Order on Remand at 17. Although the administrative law judge noted that a copy of the medical article was not admitted into the record, he nevertheless stated that he located and reviewed the full text of this article and determined that Dr. Renn's testimony did not accurately assess the contents of the article.[12] The administrative law judge also stated that, "to the extent that Dr. Renn cites to published medical literature supporting his position, and the literature is not proffered and admitted, then the probative value of Dr. Renn's opinion is compromised." *Id*. at 18 n.2. However, the administrative law judge did not consider whether the opinion of Dr. Cohen was compromised by Dr. Cohen's reference to medical articles that were not admitted into the record.[13] Rather, after finding that Dr. Cohen's opinion was supported by the opinions of

[12] In remanding this case, the Board held, *inter alia*, that the administrative law judge had failed to explain: 1) his determination that Dr. Renn's reference to medical literature regarding asthma provided support for his opinion; 2) how Dr. Renn's review of evidence that was not admitted into the record did not detract from his opinion; or, 3) how he determined that Dr. Renn did not rely upon that evidence in rendering his opinion. *Young*, BRB No. 08-0643 BLA, slip op. at 16-17. Accordingly, the Board directed the administrative law judge to "reconsider the effect the review of inadmissible evidence has upon the probative value of Dr. Renn's opinion, and explain his findings." *Young*, BRB No. 08-0643 BLA, slip op. at 17.

[13] The administrative law judge noted that Dr. Cohen explained that a lung disease related to coal dust exposure may be diagnosed, even in the absence of findings on x-ray, and that it may manifest in a late onset, particularly in view of the absence of factors in this claimant, such as smoking, asthma as a child or young adult, or any other

Dr. Houser and claimant's treating physicians, including Dr. Tippy, the administrative law judge determined that Dr. Cohen's opinion was the most well-reasoned and well-documented. The administrative law judge noted that Dr. Cohen reviewed and considered the extensive medical data of record in rendering his opinion. The administrative law judge further stated:

> The fact that Dr. Cohen considered certain inadmissible data, such as Dr. Tuteur's testing and report, does not render his conclusions less probative. To the contrary, a significant amount of medical data considered by Dr. Cohen was admitted as evidence in this claim and this data provides adequate support for his diagnosis of legal coal workers' pneumoconiosis.

Decision and Order on Remand at 21.

The Administrative Procedure Act (APA), 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), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In this case, the administrative law judge failed to provide an adequate explanation for finding that "[t]he fact that Dr. Cohen considered certain inadmissible data, such as Dr. Tuteur's testing and report, does not render his conclusions less probative." Decision and Order on Remand at 21; *see Wojtowicz*, 12 BLR at 1-165; *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Rather, the administrative law judge merely stated that "a significant amount of medical data considered by Dr. Cohen was admitted as evidence in this claim and this data provides adequate support for his diagnosis of legal coal workers' pneumoconiosis." Decision and Order on Remand at 21. Thus, because the administrative law judge erred in uncritically accepting Dr. Cohen's opinion, which relied on medical articles that were not admitted into the record, while critically scrutinizing Dr. Renn's opinion on the same issue, *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999)(*en banc*); *Wojtowicz*, 12 BLR at 1-165, the administrative law judge's finding that Dr. Cohen's opinion was the most well-reasoned and well-documented cannot be affirmed.[14] Consequently, we vacate the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and remand the case for further consideration of all the medical opinions in accordance with the APA.

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documented exposures. Decision and Order on Remand at 21; Claimant's Exhibit 7.

[14] Employer asserts that Dr. Cohen is biased against it. Because employer has not demonstrated any bias or prejudice on the part of Dr. Cohen, we reject employer's assertion. *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101 (1992).

On remand, when considering the medical opinion evidence, the administrative law judge should address the comparative credentials of the respective physicians,[15] the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See generally Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

Because we vacate the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), we also vacate the administrative law judge's finding that the evidence established that claimant's legal pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(a).[16] Furthermore, because we herein vacate the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), we also vacate the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) and remand the case for further consideration of the evidence in accordance with the APA, if reached. On remand, the administrative law judge must consider the evidence in accordance with the disability causation standard set forth at 20 C.F.R. §718.204(c).[17] *Shelton v. Director, OWCP*, 899 F.2d 630, 13 BLR 2-444 (7th Cir.

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[15] We hold that employer's assertion that the administrative law judge erred in finding that Dr. Cohen's qualifications were superior to those of Dr. Renn, to the extent that his finding was based on the fact that Dr. Cohen continued to treat patients clinically, while Dr. Renn retired from active practice, has merit. Like Dr. Cohen, Dr. Renn is Board-certified in internal medicine and pulmonary disease. Claimant's Exhibit 7; Employer's Exhibit 9 (Dr. Renn's Deposition at 7). Although Dr. Renn testified that he retired from patient care in 2003, he explained how he stayed up-to-date with his training. Employer's Exhibit 9 (Dr. Renn's Deposition at 6-7). On remand, the administrative law judge must explain why he found that Dr. Cohen's credentials are superior to those of Dr. Renn because Dr. Cohen has an active practice in the field of occupational lung disease. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Moreover, as employer asserts, the administrative law judge must accurately characterize the number of articles authored by Drs. Renn and Cohen in assessing the physicians' qualifications. *Id.*

[16] On remand, if the administrative law judge finds that the medical opinion evidence establishes the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), then he need not separately determine the etiology of the disease at 20 C.F.R. §718.203, as his findings at Section 718.202(a)(4) will necessarily subsume that inquiry. *Kiser v. L&J Equipment Co.*, 23 BLR 1-146, 1-159, n.18 (2006).

[17] Section 718.204(c)(1) provides that:

1990); *Hawkins v. Director, OWCP*, 906 F.2d 697, 14 BLR 2-17 (7th Cir. 1990). The administrative law judge must specifically consider whether legal pneumoconiosis, if found, contributed to claimant's totally disabling respiratory impairment at 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits on Remand is vacated 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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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

> A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:
>
> > (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
> >
> > (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1)(i), (ii).