BRB No. 98-0230 BLA

ROBERT RAY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
KENELLIS ENERGIES, INCORPORATED	)	
	)	DATE ISSUED: 8/18/99
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-In-Interest	)	DECISION AND ORDER

Appeal of the Decision and Order After Remand – Awarding Benefits of Ellin M. O'Shea, Administrative Law Judge, United States Department of Labor.

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

Michael J. Pollack (Arter & Hadden, LLP), Washington, D.C., for employer.

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

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

PER CURIAM:

Employer appeals the Decision and Order After Remand – Awarding Benefits (90-BLA-1359) of Administrative Law Judge Ellin M. O'Shea on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case is before the Board for the third time. In the original Decision and Order issued on October 28, 1991, Administrative Law Judge Robert S. Amery determined that the instant case was a duplicate claim pursuant to 20 C.F.R. §725.309(d).[1] Judge Amery credited claimant with twenty-five years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on claimant's April 1986 filing date. Addressing the merits, Judge Amery found the evidence of record sufficient to

[1] Claimant filed his initial claim for benefits on September 29, 1980. Director's Exhibit 1. This claim was denied by the district director on March 9, 1981. Director's Exhibit 19.

Claimant filed his second, and current, claim on April 22, 1986, which was denied by the district director on December 2, 1986. Director's Exhibits 2, 31. The case was forwarded to the Office of Administrative Law Judges. By Order of Remand, Administrative Law Judge Robert L. Hillyard remanded the case to the district director for evaluation pursuant to the Board's decision in *Lukman v. Director, OWCP*, 11 BLR 1-71 (1988)(*en banc*). The district director found that claimant failed to establish a material change in conditions and denied benefits on February 24, 1989. Claimant appealed this denial to the Board. In order to comport with *Lukman v. Director, OWCP*, 896 F.2d 1248, 13 BLR 2-332 (10th Cir. 1990), the Board, by Order dated April 19, 1990, remanded the case to the Office of Administrative Law Judges and the case was assigned to Administrative Law Judge Robert S. Amery.

establish the existence of pneumoconiosis arising out of claimant's coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). In addition, Judge Amery found the evidence sufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). Accordingly, he awarded benefits.

On appeal, the Board vacated Judge Amery's award of benefits and remanded the case for further consideration. In particular, the Board remanded the case for Judge Amery to consider the duplicate claim pursuant to Section 725.309(d), under the standard enunciated in *Sahara Coal Co. v. Director, OWCP* [*McNew*], 946 F.2d 554, 15 BLR 2-227 (7th Cir. 1991). Additionally, the Board vacated Judge Amery's finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and remanded the case for him to reconsider all of the relevant medical opinion evidence. The Board also vacated the finding at Section 718.204(c) and remanded the case for Judge Amery to reconsider the medical evidence such that his finding comports with *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987) and *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*). The Board further instructed Judge Amery to consider 20 C.F.R. §718.204(b), if reached, in accordance with the standard enunciated in *Hawkins v. Director, OWCP*, 907 F.2d 697, 14 BLR 2-17 (7th Cir. 1990) and *Shelton v. Old Ben Coal Co.*, 899 F.2d 690, 15 BLR 2-116 (7th Cir. 1991). *Ray v. Kenellis Energies, Inc.*, BRB No. 92-0519 BLA (Sept. 27, 1993)(unpub.).

On remand, Judge Amery found that the medical opinion of Dr. Myers was sufficient to establish total respiratory disability and, thus, sufficient to establish a material change in conditions pursuant to Section 725.309(d) and *McNew, supra*. On the merits, Judge Amery again found the evidence sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Additionally, he found the evidence sufficient to establish total respiratory disability pursuant to Section 718.204(c) and that claimant's total respiratory disability was due to pneumoconiosis pursuant to Section 718.204(b). Accordingly, Judge Amery again awarded benefits.

Pursuant to employer's second appeal, the Board vacated Judge Amery's award of benefits. With respect to the finding of a material change in conditions, the Board initially rejected employer's contention that claimant was precluded from establishing a material change in conditions because he left his last coal mine employment due to a knee injury. The Board also rejected employer's contentions regarding the progressive nature of pneumoconiosis. However, the Board vacated Judge Amery's finding that claimant established a material change in conditions

pursuant to Section 725.309(d) and remanded the case for consideration of all of the newly submitted evidence in accordance with *McNew, supra*. Addressing the merits of entitlement, the Board vacated Judge Amery's finding that the medical opinion evidence was sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), holding that he impermissibly relied on the numerical superiority of the medical opinions of total disability, in light of *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994), and remanded the case for Judge Amery to reconsider all of the medical opinions of record and provide a valid rationale for his weighing of this evidence. However, the Board rejected employer's contention that Judge Amery failed to consider whether the medical opinions were well reasoned in his analysis of the evidence pursuant to Sections 718.202(a)(4) and 718.204(c), holding that this issue was fully addressed in the Board's previous Decision and Order. Likewise, the Board rejected employer's contention regarding the medical assessments contained in the medical reports of Drs. Sanjabi, Chiou and Rao, as having been addressed in the Board's previous decision. Nonetheless, the Board vacated Judge Amery's Section 718.204(c) finding, holding that Judge Amery again relied on numerical superiority in finding the evidence sufficient to establish total respiratory disability, in contravention of *Fitts, supra*. Lastly, the Board vacated Judge Amery's finding that pneumoconiosis was a contributing cause of claimant's total respiratory disability pursuant to Section 718.204(b) and remanded for consideration of the medical opinions and to provide more detailed findings as to whether the opinions show a causal connection between claimant's total respiratory disability and his pneumoconiosis. *Ray v. Kenellis Energies, Inc.*, BRB No. 94-2255 BLA (May 25, 1995)(unpub.).

On remand, the case was reassigned to Administrative Law Judge Ellin M. O'Shea (the administrative law judge) inasmuch as Judge Amery was no longer with the Office of Administrative Law Judges. Noting the Board's remand instructions, the administrative law judge found the newly submitted medical opinion evidence sufficient to establish total respiratory disability and, thus, sufficient to establish a material change in conditions pursuant to Section 725.309(d). On the merits, the administrative law judge found the medical opinions of record sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). In addition, she found the evidence sufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c). Moreover, the administrative law judge determined that the medical evidence was sufficient to establish that pneumoconiosis was a necessary cause of claimant's total respiratory disability pursuant to Section 718.204(b). Accordingly, the administrative law judge awarded benefits.

In the current appeal, employer contends that the administrative law judge

erred in awarding benefits, raising numerous challenges to the administrative law judge's findings. In particular, employer contends that the administrative law judge erred in finding the evidence sufficient to establish a material change in conditions pursuant to Section 725.309. Employer also contends that the administrative law judge erred in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Additionally, employer contends that the administrative law judge erred in finding the medical evidence sufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(c)(4). Employer further argues that the administrative law judge erred in finding that the evidence was sufficient to establish that pneumoconiosis was a necessary cause of claimant's total respiratory disability pursuant to Section 718.204(b). Lastly, employer contends that the administrative law judge erred in failing to render specific findings on the date of onset of total disability. In response, claimant urges affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), also responds, noting his disagreement with employer's interpretation of the duplicate claim standard as enunciated by the United States Court of Appeals for the Seventh Circuit. The Director argues that, contrary to employer's contention, the administrative law judge properly determined that in order to establish a material change in conditions, claimant need only establish one of the elements of entitlement previously adjudicated against him. The Director does not otherwise respond in this appeal. In its reply brief, employer reiterates its allegations of error concerning the administrative law judge's determination that the evidence is sufficient to establish a material change in conditions.

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).

With respect to Section 725.309(d), the United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, has held that a material change in conditions is established where the miner did not have pneumoconiosis at the time of the first application for benefits but has since contracted it and become totally disabled by it, or where the miner's pneumoconiosis has progressed to the point of total respiratory disability since the filing of the first application. *See McNew, supra*. Moreover, subsequent to the issuance of *McNew*, the court indicated in *Peabody Coal Co. v. Spese* [*Spese II*], 117 F.3d 1001, 21 BLR 2-115 (7th Cir. 1997), that under the *McNew* standard, if the prior denial was premised upon alternative grounds, *i.e.*, that the claimant failed to

establish either the existence of pneumoconiosis or total disability due to pneumoconiosis, automatic denial of the subsequent claim can be avoided if a material change in conditions is demonstrated with respect to one of these elements of entitlement. Therefore, the court held that in order to prevail on the duplicate claim issue, claimant must show that something capable of making a difference has changed since the record closed in the first claim. *Spese*, 117 F.3d at 1008, 21 BLR at 2-127.

In this case, the administrative law judge initially noted that the previous claim was denied by the district director because claimant failed to establish total disability due to pneumoconiosis and, specifically, that claimant failed to show total respiratory disability at the time of the first claim. Decision and Order at 8-9. The administrative law judge, pursuant to the Board's remand instructions, then considered all of the newly submitted evidence, finding that the objective evidence was non-qualifying and, therefore, insufficient to establish a material change in conditions. Decision and Order at 9. The administrative law judge next considered the medical opinions of Drs. Sanjabi, Thompson, Rao, Myers, Tuteur and Houser, finding that a comparison of the physical limitations within the 1980 and 1986 opinions of Drs. Sanjabi, Rao and Getty, shows a worsening of claimant's condition. *Id*. In addition, Dr. Myers opined that claimant's pulmonary condition probably restricted him from performing arduous manual labor, which the administrative law judge found was supportive of a finding that claimant cannot return to his usual coal mine employment since she determined that claimant's usual coal mine employment required arduous manual labor. Decision and Order at 9-10. The administrative law judge further found that Dr. Houser's statement that claimant should not return to coal mine employment because of his pulmonary condition and Dr. Houser's additional statements concerning the impact that claimant's return to coal dust exposure would have on his pulmonary condition, namely, claimant's small airways obstruction, were opinions supportive of a finding of total respiratory disability. *Id*. Lastly, the administrative law judge determined that the opinion of Dr. Tuteur was entitled to little weight, finding that his opinion, as expressed over several reports, was inconsistent and poorly reasoned. Decision and Order at 11. Additionally, the administrative law judge found that Dr. Tuteur failed to adequately explain and document his reliance on evidence not in the record in providing an opinion that claimant's musculoskeletal problems affect his breathlessness. *Id*. Based on her weighing of these medical opinions, the administrative law judge found that since the previous denial, claimant's condition has deteriorated to the point that he cannot return to his former coal mine employment and, therefore, the newly submitted evidence is sufficient to establish a material change in conditions. *Id*.

Initially, we reject employer's contention that the administrative law judge applied an erroneous standard in determining whether claimant established a material change in conditions, arguing that the administrative law judge failed to determine whether it was claimant's pneumoconiosis that progressed to the point of total disability. Contrary to employer's contention, the administrative law judge weighed the new evidence and determined that it was sufficient to establish total disability, one of the elements previously adjudicated against claimant. Decision and Order at 11. The administrative law judge found that the new medical evidence established that claimant's respiratory or pulmonary condition deteriorated since the prior denial such that he cannot return to his usual coal mine employment. *Id*. The administrative law judge properly considered not only whether the newly submitted evidence was sufficient to establish one of the elements previously adjudicated against claimant, but also found that this evidence showed that claimant's condition has deteriorated since the prior denial. Therefore, in accordance with *Spese II*, the administrative law judge reasonably determined that the new evidence of record shows that something capable of making a difference, namely, claimant's respiratory condition, which has progressed to the level of total disability, has changed since the record closed in the first claim. Decision and Order at 11; *Spese, supra; see also McNew, supra*. Consequently, we reject employer's contention that the administrative law judge applied an improper standard in weighing the evidence pursuant to Section 725.309(d).

Moreover, we reject employer's contention that the administrative law judge erred in failing to determine whether the physical limitations relied upon were medical assessments by the physicians or merely claimant's recitation of symptoms. The Board, in each of its previous decisions, addressed and rejected this argument, *see Ray*, BRB No. 92-0519 BLA, slip op. at 6; *Ray*, BRB No. 94-2255 BLA, slip op. at 5, therefore, the law of the case doctrine governs. *See Gillen v. Peabody Coal Co.*, 16 BLR 1-22 (1991); *Cochran v. Consolidation Coal Co.*, 12 BLR 1-136 (1989); *see also Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989)(Brown, J., dissenting).

However, we vacate the administrative law judge's finding that the evidence of record is sufficient to establish a material change in conditions pursuant to Section 725.309(d) and remand the case for the administrative law judge to provide further rationale for her weighing of the medical opinions. The administrative law judge reasonably found the opinion of Dr. Myers, that claimant's silicosis results from his entire exposure and these changes are permanent and probably restrict arduous manual labor, was a diagnosis of total disability, in light of the administrative law judge's finding that claimant's coal mine employment required arduous manual labor. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988);

Campbell v. Director, OWCP, 11 BLR 1-16 (1987); *Salisbury v. Island Creek Coal Co.*, 7 BLR 1-501 (1984). Nonetheless, we hold that the administrative law judge failed to adequately explain the basis for her finding that the opinion of Dr. Houser is sufficient to establish a totally disabling respiratory or pulmonary impairment in light of Dr. Houser's statement that claimant has no functional disability attributable to his coal mine employment, *see* Employer's Exhibit 18. Moreover, Dr. Houser's additional comment that claimant should not return to coal mine employment because his respiratory impairment will be aggravated, is insufficient to establish total respiratory disability under the Act. *Taylor v. Evans and Gambrel Co., Inc*., 12 BLR 1-83 (1988); *Justice, supra.* Consequently, on remand, the administrative law judge must weigh the entirety of Dr. Houser's opinion in determining whether it is still sufficient to establish total respiratory disability, when compared with the contrary, probative evidence, and thus, sufficient to establish a material change in conditions pursuant to Section 725.309(d). *See Fields, supra; Shedlock, supra; see also Spese, supra; McNew, supra*.

Turning to the findings on the merits, we affirm the administrative law judge's finding that the medical opinion evidence is sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Initially, we reject employer's contention that the administrative law judge erred in finding that the opinions of Drs. Myers, Sanjabi, Thompson, Rao and Houser were well reasoned because these opinions were premised on positive x-ray interpretations. Employer's Brief at 27. We fully addressed this issue and rejected employer's challenge in both of our prior decisions, *see Ray*, BRB No. 92-0519 BLA, slip op. at 4; *Ray*, BRB No. 94-2255 BLA, slip op. at 5, therefore, the law of the case doctrine governs. *See Gillen, supra; Cochran, supra; see also Williams, supra*. Likewise, we reject employer's contention that the record is devoid of evidence supportive of a finding that Drs. Sanjabi and Thompson are claimant's treating physicians. As the Board held in its 1993 Decision and Order, Judge Amery properly characterized Drs. Thompson and Sanjabi as treating physicians based on claimant's hearing testimony, *see* Hearing Transcript at 39-40, 41, 43, 45. *See Ray*, BRB No. 92-0519 BLA, slip op. at 5 n.7. Thus, inasmuch as we have fully addressed this issue and rejected employer's challenge, the law of the case doctrine governs. *See Gillen, supra; Cochran, supra*.

Moreover, we reject employer's contention that the administrative law judge's finding that the opinions of Drs. Getty and Chiou are not diagnoses of the absence of pneumoconiosis violates the doctrine of the law of the case. Employer's Brief at 26-27. Contrary to employer's contention, the Board, in the previous decision in this case, did not affirm a finding that the opinions of Drs. Getty and Chiou are diagnoses of no pneumoconiosis. Rather, the Board addressed the specifics of Judge Amery's findings at Section 718.202(a)(4), *i.e.*, his crediting of the relevant

medical opinions based on the status of physicians as treating physicians, based on numerical superiority and based on whether the opinions were reasoned and documented. The Board did not address whether or not these opinions were diagnoses of pneumoconiosis. *See Ray*, BRB No. 94-2255 BLA, slip op. at 4-5. Thus, contrary to employer's contention, the administrative law judge did not violate the law of the case doctrine in weighing the opinions of Drs. Getty and Chiou. Rather, she properly exercised her discretion, as trier-of-fact, in determining the credibility of these opinions and finding that these opinions are not credible opinions contrary to a finding of the existence of pneumoconiosis. Specifically, the administrative law judge found the opinion of Dr. Chiou was not credible because of the uncertainty of his diagnosis. *See Justice, supra; Campbell, supra*. The administrative law judge also found that while the opinion of Dr. Getty was internally inconsistent, it, nonetheless, was supportive of a finding of legal pneumoconiosis inasmuch as Dr. Getty diagnosed an obstructive pulmonary disease which was due in part to coal dust exposure, even though Dr. Getty opined that there was no evidence of pneumoconiosis. Decision and Order at 12; Director's Exhibit 30; *see Peabody Coal Co. v. Lowis*, 708 F.2d 266, 5 BLR 2-84 (7th Cir. 1983); *see generally Justice, supra*. Moreover, in finding that the weight of the medical opinion evidence was sufficient to establish the existence of pneumoconiosis at Section 718.202(a)(4), the administrative law judge ultimately accorded greater weight to the opinion of Dr. Houser, as supported by the opinion of Dr. Myers, based on Dr. Houser's superior qualifications and her finding that these opinions were also supported by the opinions of claimant's treating physicians, Drs. Thompson and Sanjabi. Decision and Order at 12. Consequently, since the administrative law judge considered all of the relevant evidence of record and provided a rational basis for according greater weight to the opinion of Dr. Houser, we affirm her finding that the weight of the evidence is sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *see also Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

With respect to the administrative law judge's Section 718.204(c) finding, we vacate her determination that the old and new medical evidence of record was sufficient to establish total respiratory disability. In so finding, the administrative law judge stated that she analyzed the medical evidence of record regarding total disability in determining that the record supported a finding that claimant established a material change in conditions pursuant to Section 725.309(d). Therefore, based on her crediting of the opinions of Drs. Myers and Houser, as well as the acceptance of the physical limitations noted by the other physicians of record, in her analysis of the evidence pursuant to Section 725.309(d), the administrative law judge found that the weight of the medical evidence likewise was

sufficient to establish total respiratory disability pursuant to Section 718.204(c). Decision and Order at 12-13. However, inasmuch as we vacated the administrative law judge's weighing of the medical opinion of Dr. Houser pursuant to Section 725.309(d), *see* discussion, *supra*, and for the reasons set forth therein, we further vacate her finding at Section 718.204(c). On remand, the administrative law judge must provide a separate analysis of all of the evidence of record in determining whether the contrary, probative medical evidence of record, previously and newly submitted, is sufficient to establish total respiratory disability pursuant to Section 718.204(c). *See Fields, supra; Shedlock, supra*.

Turning to Section 718.204(b), employer challenges the administrative law judge's finding that the medical evidence is sufficient to establish that pneumoconiosis was a necessary cause of claimant's total respiratory disability, arguing that the administrative law judge erred by misinterpreting the medical opinions of Drs. Houser and Myers. Employer further contends that neither physician opined that pneumoconiosis was a necessary cause of claimant's total disability. Rather, employer contends that the administrative law judge erroneously relied upon the physicians having advised claimant against returning to his coal mining. In addition, employer contends that the administrative law judge erred by misplacing the burden of proof at Section 718.204(b), arguing that the administrative law judge failed to consider the evidence ruling out a causal connection between claimant's pneumoconiosis and his total respiratory disability.

In order to be a contributing cause, pursuant to Section 718.204(b), pneumoconiosis must be a necessary, but need not be a sufficient condition of the miner's total disability. Claimant must prove a simple "but for" nexus to be entitled to benefits. *Hawkins, supra*; *see also Shelton, supra*.

Initially, the administrative law judge found that Dr. Myers opined that claimant's "condition" restricts somewhat arduous labor. In addition, the administrative law judge found that Dr. Myers, within his report, referred to claimant's silicosis as his pulmonary condition. Therefore, the administrative law judge reasonably exercised her discretion, as trier-of-fact, in determining that the "condition" which restricts arduous labor was claimant's silicosis. Decision and Order at 13. Inasmuch as this finding is not patently unreasonable nor inherently incredible, we affirm this finding. Decision and Order at 13; Claimant's Exhibit 1; *see generally Cordero v. Triple A Machine Shop*, 580 F.2d 1331 (9th Cir. 1978). Thus, the administrative law judge reasonably found that the opinion of Dr. Myers was supportive of a finding that pneumoconiosis was a contributing cause of claimant's total disability. *See Hawkins, supra; see also Compton v. Inland Steel Coal Co.*, 933 F.2d 477, 15 BLR 2-79 (7th Cir. 1991)*; Shelton, supra*.

However, as employer correctly contends, the administrative law judge failed to discuss the evidence contrary to a finding that claimant's pneumoconiosis was a contributing cause of his total respiratory disability. In particular, the administrative law judge stated that the record contained evidence that claimant's total disability was caused by pneumoconiosis and that such evidence was not persuasively rebutted. Decision and Order at 13-14. However, inasmuch as the administrative law judge did not discuss the contrary evidence, most notably, the medical opinion of Dr. Tuteur, we vacate her Section 718.204(b) finding and remand the case for consideration of all of the relevant evidence of record. *See Hawkins, supra; see also Compton, supra*; *Shelton, supra*; *Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

Moreover, as employer correctly contends, the administrative law judge failed to adequately explain how Dr. Houser's opinion, that claimant had no functional disability related to his occupation as a coal miner, is supportive of a finding that pneumoconiosis was a contributing cause of the miner's total disability. *See Hawkins, supra; see also Compton, supra; Shelton, supra*. We, therefore, vacate the administrative law judge's finding of causation pursuant to Section 718.204(b) and remand the case for the administrative law judge to adequately explain how the physicians on whom she relied made the causal connection between claimant's pneumoconiosis and his total disability. *Id.* On remand, the administrative law judge must consider all of the relevant evidence of record, in particular, Dr. Houser's medical report and deposition testimony and the contrary opinion of Dr. Tuteur pursuant to Section 718.204(b).[2]

Finally, employer contends that the administrative law judge erred in determining that April 1986 is the month in which claimant's entitlement to benefits commenced, arguing that the administrative law judge failed to render specific findings regarding the date of onset. In particular, employer contends that the administrative law judge relied on medical opinions dated 1987 and 1988 in finding claimant entitled to benefits and, therefore, this indicates that claimant became totally disabled by pneumoconiosis at some time after his April 1986 filing date. In

[2] We reject employer's contention that claimant is precluded from establishing causation pursuant to 20 C.F.R. §718.204(b) because of his retirement from coal mine employment occurred only after he suffered a knee injury, inasmuch as this argument was addressed and rejected in the Board's 1995 Decision and Order, *see Ray*, BRB No. 94-2255 BLA, slip op. at 3, 7, therefore, law of the case doctrine controls. *Gillen v. Peabody Coal Co.*, 16 BLR 1-22 (1991); *Cochran v. Consolidation Coal Co.*, 12 BLR 1-136 (1989).

concluding that claimant established entitlement to benefits as of April 1986, the administrative law judge did not render specific findings regarding the relevant evidence of record. Rather, she simply stated that the April 22, 1986 claim was granted. Decision and Order at 14.

As a general rule, once claimant's entitlement to benefits has been demonstrated, the date for commencement of those benefits is determined by the date of onset, *i.e.*, the month in which the occupational pneumoconiosis progressed to the stage of total disability. 20 C.F.R. §§725.503, 727.302; *Edmiston v. F & R Coal Co.*, 14 BLR 1-710 (1990). If the date of onset is not ascertainable from the medical evidence of record, then benefits commence with the month during which the claim was filed, unless there is evidence, which the administrative law judge finds credible, establishing that claimant was not totally disabled at some point subsequent to his filing date. *See Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986); *see also Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). Inasmuch as the administrative law judge failed to render specific findings regarding the date of onset, we vacate her onset determination and hold that, if reached on remand, specific findings regarding the date of onset must be made. *Id.*

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY

Administrative Appeals Judge