BRB No. 00-0378 BLA

LAWSON SHULL, JR.

Claimant-Respondent

v.

ZEIGLER COAL COMPANY

Employer-Petitioner

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

Party-in-Interest

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order On Remand of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Joseph J. Reiswerg, Indianapolis, Indiana, for claimant.

W. William Prochot (Arter & Hadden), Washington, D.C., for employer.

Helen H. Cox (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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order On Remand (96-BLA-1418) of Administrative Law Judge Rudolf L. Jansen awarding benefits 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 second time.

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[1] Claimant originally filed a claim on September 13, 1978, which was denied on June

Originally, in a Decision and Order issued on October 1, 1997, the administrative law judge found nineteen and one-half years of coal mine employment established and found that the instant claim was a duplicate claim pursuant to 20 C.F.R. §725.309(d) because it was filed more than one year after the denial of claimant's prior claim. Thus, the administrative law judge considered whether the new evidence submitted since the denial of claimant's prior claim established a material change in conditions pursuant to Section 725.309(d) in accordance with the standard enunciated by the United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, in *Peabody Coal Co. v. Spese*, 117 F.3d 1001, 1010, 21 BLR 2-113, 2-129 (7th Cir. 1997)(*en banc rehearing*), *modifying* 94 F.3d 369 (7th Cir. 1996), *and affirming* 19 BLR 1-45 (1995). The administrative law judge considered the relevant, newly submitted evidence pursuant to 20 C.F.R. Part 718 and found that it was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4), the element of entitlement previously adjudicated against claimant. Thus, the administrative law judge found that claimant established a material change in conditions pursuant to Section 725.309(d). The administrative law judge further found pneumoconiosis arising out coal mine employment established pursuant to 20 C.F.R. §718.203(b) and total disability due to pneumoconiosis established by the medical opinion evidence pursuant to 20 C.F.R. §718.204(b), (c)(4). Accordingly, benefits were awarded. Employer appealed and the Board initially affirmed the administrative law judge's findings pursuant to Sections 718.202(a)(1), 725.309(d) and 718.203(b). *Shull v. Zeigler Coal Co.*, BRB No. 98-0203 BLA (Dec. 16, 1998)(unpub.). However, the Board vacated the administrative law judge's findings pursuant to Sections 718.204(b) and (c)(4) and remanded the case for reconsideration of all relevant evidence pursuant to Section 718.204(c) and, if necessary, Section 718.204(b).

On remand, the administrative law judge found total disability established pursuant to Section 718.204(c) and total disability due to pneumoconiosis established pursuant to Section 718.204(b). Accordingly, benefits were awarded. On appeal, employer initially contends that the administrative law judge erred in failing to reopen the record on remand in order to provide employer an opportunity to submit evidence regarding whether pneumoconiosis is a

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27, 1980, by the Department of Labor, inasmuch as claimant failed to establish any element of entitlement, Director's Exhibit 27. Claimant took no further action on this claim. Claimant filed a second, duplicate claim on June 6, 1984, which was ultimately denied in a Decision and Order issued on March 3, 1988, by Administrative Law Judge Bernard J. Gilday, Director's Exhibit, *id*. Judge Gilday found eighteen years and four months of coal mine employment established, adjudicated the claim pursuant to 20 C.F.R. Part 718 and found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, benefits were denied. Claimant took no further action on this claim. Subsequently, claimant filed a third, duplicate claim on October 21, 1992, Director's Exhibit 1, at issue herein.

progressive disease. Employer also contends that the administrative law judge erred in finding total disability established pursuant to Section 718.204(c) and total disability due to pneumoconiosis established pursuant to Section 718.204(b). Claimant responds, urging that the administrative law judge's Decision and Order On Remand awarding benefits be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, also responds, urging the Board to reject employer's contention that the administrative law judge erred in failing to reopen the record on remand in order to provide employer an opportunity to submit evidence regarding whether pneumoconiosis is a progressive disease. Employer filed a reply brief, reiterating its contentions.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 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).

Initially, employer contends that the administrative law judge erred in refusing employer's request to reopen the record on remand to allow employer to submit evidence as to whether pneumoconiosis is a progressive disease in light of a "change in law" by the Seventh Circuit in *Spese*. In a preliminary order issued on April 7 1999, on remand, the administrative law judge noted that the issue of whether pneumoconiosis is a progressive disease was previously raised by employer when employer challenged whether claimant had established the existence of pneumoconiosis and a material change in conditions. In his Decision and Order On Remand, the administrative law judge noted that the Board had previously held that the Seventh Circuit's holding in *Spese* does not mandate dismissal of a duplicate claim in the absence of further coal dust exposure and had affirmed the administrative law judge's finding that the existence of pneumoconiosis was established and, therefore, that a material change in conditions was established pursuant to Section 725.309(d) in accordance with the standard enunciated in *Spese*, *supra*. Thus, the administrative law judge refused employer's request to submit new evidence in support of its prior challenge of whether claimant had established the existence of pneumoconiosis and a material change in conditions.

Employer contends that the Seventh Circuit's holding in *Spese*, issued after the close of the record in this case, constitutes a "change in law" because employer asserts that it now holds that employer bears the "burden of refuting" the regulatory "presumption" that pneumoconiosis is progressive, thereby entitling employer to the opportunity to respond with new evidence. Employer further contends that the administrative law judge's denial of employer's right to respond violated employer's due process rights and, therefore, requires that liability should transfer to the Black Lung Disability Trust Fund. Alternatively, employer contends that because the public record, via the comments submitted in response to the Department of Labor's new proposed Section 725.309 regulations, now establish that pneumoconiosis is not a progressive disease absent further coal dust exposure, the case

should be remanded to allow the administrative law judge to consider this fact.

Contrary to employer's contentions, the comments submitted in response to the new proposed Section 725.309 regulations are not uncontradicted against the position that pneumoconiosis is a progressive disease, *see* 62 Fed. Reg. 3344 (Jan. 22, 1997); *see also Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 314-315, 20 BLR 2-76, 2-88-91 (3d Cir. 1995), and, nevertheless, are irrelevant to this case arising under the current regulations. Moreover, the burden of proof with respect to establishing a material change in conditions pursuant to the standard enunciated by the Seventh Circuit in *Spese* continues to be on claimant and does not change employer's evidentiary burden or the type of evidence relevant to the issue and, therefore, does not compel the reopening of the record, *see Troup v. Reading Anthracite Coal Co.*, 22 BLR 1-11, 1-20-21 (1999). In addition, as the Board previously held, there is no indication that employer originally raised this argument before the administrative law judge or attempted to introduce evidence on this issue, *see Shull*, 98-0203 BLA at 4 n. 4. *See also Old Ben Coal Co. v. Scott*, 144 F.3d 1045, 21 BLR 2-391 (7th Cir. 1998); *Spese*, *supra*. Consequently, the Board's previous holding stands as the law of the case on this issue, and no exception to that doctrine has been demonstrated by employer herein, *see Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Williams v. Healy-Ball-Greenfield*, 22 BRBS 234, 237 (1989)(Brown, J., dissenting). Thus, we reject employer's contentions.

Next, employer contends that the administrative law judge erred in finding total disability established pursuant to Section 718.204(c) and total disability due to pneumoconiosis established pursuant to Section 718.204(b). In order to establish entitlement to benefits under Part 718, it must be established that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. 20 C.F.R. §§718.3; 718.202; 718.203; 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Failure to prove any one of these elements precludes entitlement, *id*. Pursuant to Section 718.204(c), the administrative law judge must weigh all relevant evidence, like and unlike, with the burden on claimant to establish total respiratory disability by a preponderance of the evidence, *see Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27 (1991)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986). In order to establish total disability due to pneumoconiosis pursuant to Section 718.204(b), in this case arising within the jurisdiction of the Seventh Circuit, claimant has the burden to establish that pneumoconiosis is, at least, a contributing cause of his total disability, and, in order to be a

[2] The law of the case doctrine is a discretionary rule of practice, based on the policy that when an issue is litigated and decided, that decision should be the end of the matter, such that it is the practice of courts generally to refuse to reopen in a later action what has been previously decided in the same case, *see Brinkley*, *supra*; *Williams*, *supra*.

contributing cause, pneumoconiosis must be a necessary, but need not be a sufficient condition of the total disability, *see Shelton v. Director, OWCP*, 899 F.2d 630, 13 BLR 2-444 (7th Cir. 1990); *Hawkins v. Director, OWCP*, 906 F.2d 697, 14 BLR 2-17 (7th Cir. 1990). Claimant must prove a simple "but for" nexus to be entitled to benefits, *id*.

In his original Decision and Order, the administrative law judge credited the opinions of Drs. Dwyer, Lenyo and Theertham to find total disability due to pneumoconiosis established pursuant to Section 718.204(b), (c)(4). While the Board previously affirmed the administrative law judge's giving less weight to the contrary opinions of record from Drs. Drummy, Pangan and Paul, Director's Exhibit 27, because of the chronological remoteness of their opinions, *Shull*, BRB No. 98-0203 BLA at 8, the Board held that the administrative law judge erred in the reasons he provided for crediting the opinions of Drs. Dwyer, Lenyo and Theertham. The Board also remanded the case for the administrative law judge to weigh all of the contrary probative evidence of record against the medical opinion evidence supportive of total disability pursuant to Section 718.204(c), *see Budash*, *supra*; *Fields*, *supra*; *Rafferty*, *supra*; *Shedlock*, *supra*.

On remand, the administrative law judge again relied on the opinions of Dwyer, Lenyo and Theertham to find total disability due to pneumoconiosis established pursuant to Section 718.204(b), (c). Pursuant to Section 718.204(c), the administrative law judge noted that all of the pulmonary function study and blood gas study evidence of record is non-qualifying, Decision and Order On Remand at 5, 9, but further noted that the Board had held that the administrative law judge had not exceeded his authority in his original Decision and Order in finding that the decrease in values of the two most recent pulmonary function studies of record, Director's Exhibit 7; Employer's Exhibit 1, supported the recent medical opinions finding total disability. *See Shull*, 98-0203 BLA at 6. Thus, the administrative law judge stated that "weighing all of the contrary and probative evidence," he found total disability established pursuant to Section 718.204(c).

However, as employer contends, the administrative law judge did not weigh all of the relevant contrary evidence, including the non-qualifying blood gas study evidence, under Section 718.204(c), *see Budash*, *supra*; *Fields*, *supra*; *Rafferty*, *supra*; *Shedlock*, *supra*, and/or resolve the conflicting blood gas study evidence. The administrative law judge must resolve conflicts in the medical evidence, *see Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), *aff'd*, 865 F.2d 916 (7th Cir. 1989), and assign the contrary probative evidence appropriate weight and determine whether it outweighs the evidence supportive of a finding of total disability pursuant to Section

[3] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(c)(1), (2).

718.204(c), *see Budash*, *supra*; *Fields*, *supra*; *Rafferty*, *supra*; *Shedlock*, *supra*.

In regard to the medical opinion evidence, Dr. Dwyer diagnosed Chronic obstructive pulmonary disease due to coal mine employment and smoking based on examination, x-ray and non-qualifying blood gas study results, while noting that he had not received the results of a pulmonary function study he had administered, and found that claimant suffered from severe dyspnea with exertion, Director's Exhibit 8. In a subsequent summary letter, Dr. Dwyer noted that while his original examination report did not specifically address disability, if it did so, he believed claimant would "qualify" as totally disabled due to his coal mine employment, Director's Exhibit 37. The Board previously held that the administrative law judge erred in his original Decision and Order in automatically according enhanced weight to Dr. Dwyer based on his status as claimant's treating physician under Section 718.204(c) and erred in not considering whether his opinion was reasoned and/or explained how his documentation supported his conclusion under Section 718.204(b) and (c), *Shull*, 98-0203 BLA at 7, 8.

On remand, the administrative law judge found Dr. Dwyer's opinion was documented and reasoned to the extent that it was based on familiarity with claimant's condition from his years of examining claimant as claimant's treating physician, and on his examination, x-ray and blood gas study results. The administrative law judge noted the Seventh Circuit's holding in *Amax Coal Co. v. Franklin*, 957 F.2d 355, 16 BLR 2-50 (7th Cir. 1992) that a treating physician's opinion may be given greater weight if that the physician's treatment over time is essential to understanding the claimant's condition and the physician knows something about the disease at issue. The administrative law judge found Dr. Dwyer's opinion entitled to significant weight "[f]or the same reason," Decision and Order On Remand at 5-6.

As employer contends, the administrative law judge again erred in giving greater weight to Dr. Dwyer's opinion in light of his status as claimant's treating physician without adequately explaining how Dr. Dwyer's treatment of claimant over time was essential to understanding claimant's pulmonary condition and without specifically considering and/or explaining Dr. Dwyer's expertise, if any, as to pulmonary disease, *see Franklin*, *supra*. In addition, the administrative law judge again did not adequately explain how Dr. Dwyer's examination, x-ray and blood gas study results, with the absence of pulmonary function study results, supported his subsequent summary conclusion that claimant was totally disabled due

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[4] As employer notes, x-ray results are not diagnostic of impairment or the extent of respiratory disability, but only of the presence or absence of disease, *see Short v. Westmoreland Coal Co.*, 10 BLR 1-127, 1-129, n. 4 (1987), and a diagnosis of pneumoconiosis does not go to the issue of impairment or disability, *see Jarrel v. C & H Coal Co.*, 9 BLR 1-52 (1986)(Brown, J., concurring and dissenting). Moreover, Dr. Dwyer's blood gas study results were non-qualifying.

to his coal mine employment, *see Tenney v. Badger Coal Co.*, 7 BLR 1-589 (1984).

The administrative law judge also credited the opinion of Dr. Lenyo. Dr. Lenyo found claimant's pulmonary function study results compatible with restrictive lung disease as seen with pneumoconiosis and stated that, in view of claimant's multiple illnesses superimposed on "moderately severe respiratory capacity" [*sic*], claimant "appears" to be disabled, Director's Exhibit 27. The Board previously held that the administrative law judge erred in his original Decision and Order in finding Dr. Lenyo's opinion sufficient to establish total disability without first comparing Dr. Lenyo's finding of, apparently, moderately severe respiratory incapacity to the exertional requirements of claimant's usual coal mine employment and by inconsistently giving less weight to the opinions of Drs. Drummy, Pangan and Paul due to the age of their reports while crediting Dr. Lenyo's contemporaneous opinion.

On remand, the administrative law judge found that Dr. Lenyo, as claimant's treating physician for over two years, was familiar with claimant's physical and pulmonary impairments so that his diagnosis weighs in favor of a total disability finding under the regulations. In addition, the administrative law judge gave less weight to Dr. Drummy's opinion due to its age and gave more weight to Dr. Lenyo's opinion than the contemporaneous, but contrary, opinions of Drs. Pangan and Paul, as Dr. Lenyo was claimant's treating physician familiar with claimant's pulmonary condition and progression and as his opinion was documented and reasoned.

Contrary to the Board's prior remand instructions, the administrative law judge again erred in finding Dr. Lenyo's opinion sufficient to establish total disability without comparing Dr. Lenyo's finding of, apparently, a moderately severe respiratory impairment to the exertional requirements of claimant's usual coal mine employment. Where the record contains an opinion providing an assessment of physical limitations due to pulmonary disease or an assessment of a miner's impairment, as well as evidence of the exertional requirements of the miner's usual coal mine employment, such an opinion may be sufficient to allow the administrative law judge to infer a finding on the issue of total disability, by comparing the physician's opinion as to the miner's physical limitations or extent of impairment to the exertional requirements of the miner's usual coal mine employment, *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Parson v. Black Diamond Coal Co.*, 7 BLR 1-236 (1984); *see also Aleshire v. Central Coal Corp.*, 8 BLR 1-70 (1985); *Stanley v. Eastern Associated Coal Corp.*, 6 BLR 1-1157 (1987); *Ridings v. C & C Coal Co.*, 6 BLR 1-227 (1983), and the ultimate finding regarding total disability is a legal determination to be made by the administrative law judge, not the physician, through consideration of the exertional requirements of the miner's usual coal mine employment in conjunction with the physician's opinion regarding the miner's physical abilities, *see Hvizdzak v. North American Coal Corp.*, 7 BLR 1-469 (1984); *see also Aleshire*, *supra*. Moreover, as employer contends, the administrative law judge erred in giving greater weight to Dr. Lenyo's opinion in light of his status as claimant's treating physician without adequately explaining how Dr. Lenyo's

treatment of claimant from 1978 to 1980 and his 1986 medical report was essential to understanding claimant's pulmonary condition and without specifically considering and/or explaining Dr. Dwyer's expertise, if any, as to pulmonary disease, *see Franklin*, *supra*.

Finally, in the most recent opinion of record considered by the administrative law judge, Dr. Theertham found that claimant suffered from a pulmonary obstructive impairment due, in part, to his coal dust exposure which precluded claimant from performing his last coal mine employment, which Dr. Theertham noted included lifting fifty to one-hundred pounds a day, Director's Exhibit 37. The Board previously held that the administrative law judge erred in his original Decision and Order in relying on Dr. Theertham's opinion without considering that Dr. Theertham's characterization that claimant's last coal mine employment included lifting fifty to one-hundred pounds a day was inconsistent with claimant's testimony that his last coal mine employment did not require claimant to lift more than fifty pounds, *see* Hearing Transcript at 32. *Shull*, 98-0203 BLA at 6.

On remand, the administrative law judge found that Dr. Theertham's opinion "should not be discredited only because" claimant's testimony was "not precisely the same" as Dr. Theertham's. Decision and Order On Remand at 8. Thus, the administrative law judge assigned significant weight to Dr. Theertham's opinion as it "reflects the claimant's own description of his usual coal mine duties, because it is the most recent examination report of record," and because it is documented and reasoned.

Employer contends that the administrative law judge's finding conflicts with the Board's previous holding that Dr. Theertham's characterization of claimant's last coal mine employment duties is inconsistent with claimant's testimony. However, the administrative law judge considered the apparent conflict between Dr. Theertham's opinion and claimant's testimony and, nevertheless, found Dr. Theertham's opinion was adequately documented and reasoned. The administrative law judge, as the trier-of-fact, has broad discretion to assess the evidence of record and draw his own conclusions and inferences therefrom, *see Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty*, *supra*; *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), and to determine whether an opinion is documented and reasoned, *see Fields, supra; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Thus, inasmuch as the administrative law judge's function is to resolve the conflicts in the

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[5] Although employer contends that Dr. Lenyo's treatment of claimant from 1978 to 1980 and his 1986 medical report are irrelevant as to claimant's pulmonary condition since the prior denial in 1988, inasmuch as administrative law judge properly found a material change in conditions was established pursuant to Section 725.309(d), the administrative law judge then properly considered all relevant medical opinion evidence, including Dr. Lenyo's opinion, on the merits of entitlement under Section 718.204(b), (c), which had not been considered in claimant's prior, denied claim, *see Spese*, *supra*.

medical evidence, *see Lafferty*, *supra*; *Fagg*, and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), the administrative law judge's finding that Dr. Theertham's opinion was adequately documented and reasoned is affirmed.

Nevertheless, inasmuch as the administrative law judge did not weigh all of the relevant contrary evidence under Section 718.204(c), *see Budash*, *supra*; *Fields*, *supra*; *Rafferty*, *supra*; *Shedlock*, *supra*, and erred in his weighing of the opinions of Drs. Dwyer and Lenyo under Sections 718.204(b) and(c), we vacate the administrative law judge's findings pursuant to Section 718.204(b) and (c) and remand the case for reconsideration. If the administrative law judge finds total disability established pursuant to Section 718.204(c) on remand, he should then reconsider whether total disability due to pneumoconiosis is established pursuant to Section 718.204(b).

Finally, as employer contends, the administrative law judge awarded benefits from the date of filing, October, 1992, without considering whether the evidence of record established a date of onset of claimant's total disability due to pneumoconiosis from which benefits should commence. An administrative law judge must consider all relevant evidence in determining the date of onset of claimant's disability and assess its credibility, *see Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). If an onset date is not ascertainable, then benefits commence as of the month the claim was filed, 20 C.F.R. §725.503(b); *Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986); *Gardner v. Consolidation Coal Co.*, 12 BLR 1-184 (1989), unless credible medical evidence indicates that the miner was not totally disabled due to pneumoconiosis at some point subsequent to his filing date, *see Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Gardner*, *supra*; *Lykins*, *supra*.

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[6] We reject employer's contention that the administrative law judge erred in failing to consider other, non-respiratory causes for claimant's disability in finding total disability due to pneumoconiosis established pursuant to Section 718.204(b) and employer's contention that in order to establish total disability due to pneumoconiosis, claimant had to rule out other potential causes of his disability. Claimant has the burden to establish that pneumoconiosis is, at least, a contributing cause of his total disability pursuant to Section 718.204(b), and, in order to be a contributing cause, pneumoconiosis must be a necessary, but need not be a sufficient condition of the total disability, *see Shelton*, *supra*; *Hawkins*, *supra*. Claimant must prove a simple "but for" nexus to be entitled to benefits, *id*. Thus, contrary to employer's contention, inasmuch as Dr. Theertham found that claimant was totally disabled due to a pulmonary obstructive impairment arising, in part, from his coal dust exposure, Dr. Theertham's opinion is sufficient to establish that pneumoconiosis, as more broadly defined by the Act and regulations, is a contributing cause of claimant's total disability pursuant to Section 718.204(b), *id*.

Moreover, an administrative law judge must determine the date on which claimant became totally disabled due to pneumoconiosis, not just the date on which he becomes totally disabled by any cause, *see Carney v. Director, OWCP*, 11 BLR 1-32 (1987). Thus, we vacate the administrative law judge's awarding of benefits from the date of filing and remand the case for reconsideration of all relevant evidence in determining the date of onset of claimant's disability pursuant to Section 725.503, if necessary, *see* 20 C.F.R. §725.503; *Krecota*, *supra*; *Edmiston*, *supra*; *Gardner*, *supra*; *Lykins*, *supra*; *see also Eifler*, *supra*.

Accordingly, the administrative law judge's Decision and Order On Remand awarding benefits is affirmed in part, vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge