U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0153 BLA

JAMES T. CARROLL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BEAVER CREEK COAL COMPANY	)	DATE ISSUED: 12/21/2016
	)	
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 Granting Benefits of Paul R. Almanza, Administrative Law Judge, United States Department of Labor.

James R. Black (Black & Black Law), Salt Lake City, Utah, for claimant.

Catherine MacPherson (MacPherson, Kelly & Thompson, LLC), Rawlins, Wyoming, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (2013-BLA-05560) of Administrative Law Judge Paul R. Almanza rendered on a claim filed on January 30, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with eleven

years of coal mine employment,[1] and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of clinical and legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), and 718.203. The administrative law judge also found that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b) and total disability due to pneumoconiosis pursuant to 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 x-ray evidence established the existence of clinical[2] pneumoconiosis at 20 C.F.R. §718.202(a)(1). Employer also argues, relevant to 20 C.F.R. §718.203, that the administrative law judge erred in finding that claimant's clinical pneumoconiosis arose out of his coal mine employment. Further, employer challenges the administrative law judge's finding that the medical opinion evidence established the existence of legal[3] pneumoconiosis at 20 C.F.R. §718.202(a)(4). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a brief in this appeal.[4]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence,

[1] Because claimant established fewer than fifteen years of coal mine employment, the administrative law judge properly found that claimant cannot invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).

[2] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[3] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established eleven years of coal mine employment and total respiratory disability pursuant to 20 C.F.R. §718.204(b). *See Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 3, 18-19.

and in accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment was due to pneumoconiosis. 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 an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Existence of Clinical Pneumoconiosis

Employer contends that the administrative law judge erred in finding that the analog x-ray evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1). The administrative law judge considered three readings of an analog x-ray dated April 23, 2012.[6] Dr. Suarez, who does not possess any radiological qualifications, classified the x-ray as positive, 1/2, for pneumoconiosis. Director's Exhibit 11. Drs. Alexander and Morris, who are both dually-qualified as B readers and Board-certified radiologists, also classified the x-ray as positive for pneumoconiosis, 1/0. Director's Exhibits 26, 28; Employer's Exhibit 1. The administrative law judge gave greater weight to the readings by Drs. Alexander and Morris, based on their superior radiological qualifications and, because their readings were in accord, found that the x-ray evidence established the existence of clinical pneumoconiosis. Decision and Order at 14.

Employer asserts that the administrative law judge erred in finding Dr. Morrison's interpretation of the April 23, 2012 x-ray to be positive for clinical pneumoconiosis. Employer contends that the administrative law judge erred in failing to consider Dr. Morrison's deposition testimony that his x-ray reading was not a diagnosis of coal workers' pneumoconiosis, but merely indicated the presence of abnormalities consistent with some sort of inhalation disease or pneumoconiosis. Employer's Brief at 15, 18-20.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit because claimant's coal mine employment was in Utah. *See Shupe v. Director*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 2.

[6] Dr. Foreman, a B reader, read the April 23, 2012 x-ray for quality only, Quality 2. Director's Exhibit 13. Drs. Suarez and Morrison also marked the film Quality 2, and Dr. Alexander marked the film Quality 3.

Contrary to employer's argument, a physician's comment that does not undermine the physician's x-ray diagnosis of pneumoconiosis, but merely addresses the source of the diagnosed pneumoconiosis, need not be considered at Section 718.202(a)(1), but is to be considered by the fact finder at Section 718.203, where the issue is whether the pneumoconiosis arose out of coal mine employment. *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5-6 (1999) (en banc on recon.). The pertinent regulations at 20 C.F.R. §§718.102(b) and 718.202(a)(1) permit an administrative law judge to find the existence of pneumoconiosis based on a chest x-ray that is classified as Category 1/0 or greater under the ILO-U/C system. 20 C.F.R. §§718.102(b), 718.202(a)(1); *see Cranor*, 22 BLR at 1-4. Evidence relevant to a determination of whether the opacities seen on x-ray are opacities of coal workers' pneumoconiosis, and not some other disease process, cannot be used to negate a properly classified positive reading at 20 C.F.R. §718.202(a)(1). *Kiser v. L&J Equipment Co.*, 23 BLR 1-246, 1-257-59 (2006). Thus, we reject employer's assertion that the administrative law judge erred in finding the x-ray evidence to be positive for pneumoconiosis, at 20 C.F.R. §718.202(a)(1). *Cranor*, 22 BLR at 1-5-6. No other arguments were raised by employer regarding the weighing of the analog x-ray evidence at 20 C.F.R. §718.202(a)(1). We therefore affirm the administrative law judge's finding that claimant established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1).

Employer also argues that the administrative law judge erred in finding that claimant established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a) overall. Specifically, employer asserts that the administrative law judge erred in failing to explain why he found that the positive analog x-ray evidence outweighed the contrary digital x-ray and computed tomography (CT) scan evidence of record. Employer's assertion has merit.

After finding the analog x-ray evidence to be positive for clinical pneumoconiosis, the administrative law judge considered the digital x-ray and CT scan evidence, submitted pursuant to 20 C.F.R. §718.107.[7] Dr. Morrison opined that the digital x-ray, dated September 24, 2012, did not show evidence of pneumoconiosis, but reflected changes consistent with emphysema. Director's Exhibit 26; Employer's Exhibit 2. Dr. Cottam opined that the CT scan, dated July 2, 2012, showed "mild to moderate changes of centrilobular and paraseptal emphysema" with "bullous disease within the right lower

[7] The administrative law judge found that the digital x-ray and computed tomography (CT) scan were medically acceptable and relevant evidence, pursuant to 20 C.F.R. §718.107. *See Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-132-33 (2006) (en banc) (Boggs, J., concurring), *aff'd on recon.*, 24 BLR 1-1 (2007) (en banc); Decision and Order at 5, 11.

lobe."[8] Employer's Exhibit 7. Based on these uncontradicted opinions, the administrative law judge found that the digital x-ray and CT scan evidence did not establish the existence of clinical pneumoconiosis.[9]

Turning to the medical opinion evidence relevant to the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge noted that Dr. Suarez diagnosed clinical pneumoconiosis, but recommended that claimant undergo a CT scan to confirm the diagnosis.[10] Decision and Order at 8, 15; Director's Exhibit 11. The administrative law judge found that Dr. Gagnon also diagnosed clinical pneumoconiosis. Decision and Order at 11, 15; Claimant's Exhibit 2. In contrast, Dr. Farney opined that claimant does not suffer from clinical pneumoconiosis. Decision and Order at 8-11, 15; Employer's Exhibit 5. The administrative law judge gave little weight to the opinions of Drs. Suarez and Gagon because their diagnoses of clinical pneumoconiosis were contradicted by both the digital x-ray reading by Dr. Morrison, and the results of the CT scan, which Dr. Suarez herself recommended.[11] The administrative law judge therefore found that claimant did not establish the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Considering the evidence together, the administrative law judge accorded the greatest weight to the analog x-ray evidence. Specifically, the administrative law judge stated:

> While I recognize that the analog x-ray evidence is inconsistent with the digital x-ray and CT scan evidence, I also recognize that three different

---

[8] Dr. Morrison reviewed Dr. Cottman's CT scan report and stated that "it does not indicate any evidence of coal workers' pneumoconiosis based on [Dr. Cottman's] interpretation." Employer's Exhibit 8 at 27-28.

[9] The administrative law judge noted that neither Dr. Morrison nor Dr. Cottman indicated whether the emphysema they observed arose out of coal mine employment. Decision and Order at 15; Employer's Exhibits 2, 7.

[10] Dr. Suarez diagnosed clinical pneumoconiosis based on her positive reading of the April 23, 2012 analog x-ray, but acknowledged that the results of the x-ray were "not clear" due to both claimant's obesity and the poor quality x-ray film. Director's Exhibit 11.

[11] The administrative law judge additionally accorded little weight to Dr. Gagon's diagnosis of clinical pneumoconiosis because he did not discuss the basis for his conclusion and none of his medical treatment records contained a diagnosis of clinical pneumoconiosis. Decision and Order at 15.

> doctors [Drs. Alexander, Morrison and Suarez] looked at the same analog x-ray and determined that [c]laimant has pneumoconiosis. . . . Weighing this conflicting evidence, I find the weight of the evidence supports a conclusion that [c]laimant established the presence of clinical pneumoconiosis through analog x-ray evidence.

Decision and Order at 16.

Employer validly argues that, having found that the digital x-ray and CT scan readings outweighed the medical opinions, including Dr. Suarez's diagnosis of clinical pneumoconiosis, which was based in part on the doctor's positive reading of the April 23, 2012 analog x-ray, the administrative law judge did not rationally conclude that the analog evidence is sufficient to establish the existence of clinical pneumoconiosis. Nor did the administrative law judge consider Dr. Morrison's testimony that the clearer image afforded by the digital x-ray called into question his earlier positive analog x-ray reading.[12] 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), 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). Here, the administrative law judge did not adequately explain why he found that the analog x-ray evidence outweighed the digital x-ray and CT scan evidence. *See Wojtowicz*, 12 BLR at 1-165. We, therefore, vacate the administrative law judge's finding that claimant established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a) overall, and remand the case for further consideration all of the evidence together in accordance with the APA.

We next address employer's contention, relevant to 20 C.F.R. §718.203(b), that the administrative law judge erred in finding that claimant's clinical pneumoconiosis arose out of coal mine employment. The administrative law judge properly noted that if a miner who is suffering from pneumoconiosis was employed for ten or more years in the coal mines, there is a rebuttable presumption that the pneumoconiosis arose out of his

[12] Dr. Morrison stated that the April 23, 2012 analog x-ray film was dark due to over exposure, which affected his ability to read it, but that he observed some linear interstitial opacities which he felt were in the mid and lower lung zones. Employer's Exhibit 8 at 10. Dr. Morrison further stated that he could also see these interstitial infiltrates on the September 24, 2012 digital x-ray. *Id.* at 20. However, Dr. Morrison explained, with the improved quality of the digital x-ray it became apparent that these infiltrates were actually peribronchial infiltrates, located at the margins of the airways, and thus were more likely attributable to airways disease, such as allergic pneumonitis. *Id.* at 21-23, 26.

coal mine employment. 20 C.F.R. §718.203(b); Decision and Order at 17. Employer asserts that in finding that claimant's clinical pneumoconiosis arose out of coal mine employment, the administrative law judge failed to adequately consider the testimony of Dr. Morrison, that his positive reading of the April 23, 2012 x-ray was not a diagnosis of *coal workers'* pneumoconiosis. Employer's Brief at 15, 18-20 (emphasis added). Employer's contention has merit.

As set forth above, a physician's comments that address the source of the diagnosed pneumoconiosis are to be considered by the fact finder at Section 718.203, where the issue is whether the pneumoconiosis arose out of coal mine employment. *Cranor*, 22 BLR at 1-5-6. Relevant to this issue, Dr. Alexander, who marked the ILO classification form as showing parenchymal abnormalities consistent with pneumoconiosis, Category 1/0, specifically diagnosed "coal workers' pneumoconiosis" in his accompanying narrative interpretation. Director's Exhibit 28.

Dr. Morrison also explained his x-ray reading. Dr. Morrison stated that he observed "linear interstitial infiltrates … in the middle and lower lungs" on the April 23, 2012 x-ray. Employer's Exhibit 8 at 11. Dr. Morrison stated that because those interstitial infiltrates sometimes, but not always, are indicative of "the presence of inhalation disease or pneumoconiosis," he marked the ILO classification form to indicate that the x-ray reflected parenchymal abnormalities consistent with pneumoconiosis, Category 1/0. *Id*. at 11. Dr. Morrison added, however, that the x-ray "doesn't tell us what caused that scarring in the lungs," and confirmed that his x-ray reading was not a determination that *coal workers'* pneumoconiosis exists. *Id.* at 11, 12, 19 (emphasis added). He explained that he was simply making a radiographic determination of whether disease is present or absent, not rendering a specific disease diagnosis. *Id.* at 12, 19.

Because the administrative law judge did not resolve the conflicting evidence relevant to whether the changes seen on x-ray are attributable to coal workers' pneumoconiosis, or some other disease, we vacate the administrative law judge's finding that claimant's pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b) and we remand the case for further consideration of all the evidence relevant to rebuttal of that section. *See Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024, 24 BLR 2-297, 2-314 (10th Cir. 2010); *Hansen v. Director, OWCP*, 984 F.2d 364, 370, 17 BLR 2-48, 2-59 (10th Cir. 1993).

Existence of Legal Pneumoconiosis

Employer also asserts 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). Employer specifically argues that the administrative law judge erred in

failing to consider the equivocal nature of Dr. Suarez's opinion regarding the cause of claimant's chronic obstructive pulmonary disease (COPD). Employer's Brief at 29. Employer's contention has merit.

In determining whether claimant established the existence of legal pneumoconiosis at Section 718.202(a)(4), the administrative law judge considered the opinions of Drs. Suarez, Farney, and Gagon. The administrative law judge stated that that Dr. Suarez diagnosed legal pneumoconiosis based on her conclusion that claimant's hypoxemia and COPD are due to multiple factors, and could have been contributed to by coal mine dust exposure. Decision and Order at 15. The administrative law judge noted that Dr. Farney concluded that claimant does not have legal pneumoconiosis, and that his COPD is due to smoking. Finally, the administrative law judge found that Dr. Gagon did not discuss the etiology of claimant's COPD. *Id*. The administrative law judge discredited Dr. Farney's opinion, finding it to be inadequately explained and based on general statistical probabilities. *Id*. at 16-17. By contrast, the administrative law judge found that "Dr. Suarez's opinion that [c]laimant's [COPD] is due to multiple factors is sufficient to establish legal pneumoconiosis, that is, that the [COPD] arose, in part, from [c]laimant's coal mine employment." *Id*. at 17. The administrative law judge additionally stated that "Dr. Suarez concluded that [c]laimant's coal mine dust exposure was a factor in the hypoxemia and [COPD] noting these diagnoses were consistent with [c]laimant's exposure to coal mine dust and noting the extent of disability was out of proportion to that expected if cigarette smoking was the only causative factor." *Id*.

As employer correctly asserts, however, in finding legal pneumoconiosis established based on Dr. Suarez's opinion, the administrative law judge did not adequately address the equivocal nature of her opinion. In her April 23, 2012 report, Dr. Suarez stated that the cause of claimant's COPD and hypoxemia "could be multifactorial patient's degree/severity of disease seems somewhat out of proportion to years and packs/day smoked [and] occupational exposure could have contributed to advanced disease."[13] Director's Exhibit 11; Claimant's Exhibit 1. Because the administrative law judge did not address the qualified nature of the language contained in Dr. Suarez's report, or explain why the physician's opinion was sufficient to establish that claimant's COPD was substantially contributed to or significantly aggravated by coal mine dust exposure, he failed to satisfy the requirements of the APA that a fact-finder address all relevant evidence, resolve the conflicts, and set forth the rationale underlying his

[13] In the narrative portion of her report, Dr. Suarez added that claimant's "COPD appears to be moderate by [the pulmonary function testing] criteria but hypoxemia, chest x[-]ray and degree of limitation are out of proportion to [the]degree of obstruction seen on pulmonary function testing. There may be more than one condition coexisting as chest x[-]ray is not clear." Director's Exhibit 11.

findings. *See Gunderson*, 601 F.3d at 1024, 24 BLR at 2-314; *Hansen*, 984 F.2d at 370, 17 BLR at 2-59; *Wojtowicz*, 12 BLR at 1-165. We also note that the administrative law judge mischaracterized Dr. Gagon's opinion by finding that Dr. Gagon did not discuss the etiology of claimant's COPD. *See Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985); Decision and Order at 16. Contrary to the administrative law judge's finding, Dr. Gagon opined that claimant's COPD is related smoking and coal dust exposure. Claimant's Exhibit 2. Thus, 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.

On remand, the administrative law judge must reconsider the medical opinion evidence and explain his findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165. We emphasize that the use of less-than-certain language does not automatically disqualify a physician's opinion as equivocal. *Hobet Min., Inc. v. Terry*, 219 F. App'x 310, 313 (4th Cir. 2007), *citing Perry v. Mynu Coals, Inc*., 469 F.3d 360, 365-66, 23 BLR 2-374, 2-385-86 (4th Cir. 2006) (holding that the refusal to express a diagnosis in categorical terms is candor, not equivocation); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-587, 2-606 (4th Cir. 1999) (explaining that the meaning of an ambiguous word or phrase and the weight to give the testimony of an uncertain witness are questions for the trier-of-fact). Rather, the less-than-certain statements by Dr. Suarez must be read in context to determine whether the opinion in its entirety is equivocal or was merely expressed in cautious medical language.

Prior to considering the medical opinion evidence, however, the administrative law judge must reconsider his findings regarding claimant's smoking history, as this could be relevant to his evaluation of the medical opinion evidence.[14] The administrative law judge found that claimant smoked five-eighths of a pack per day for seventeen years, and thus that claimant has a 10.625 pack-year smoking history. Decision and Order at 3. In making this determination, the administrative law judge noted that claimant testified that he smoked from 1973 to 1990, a period of seventeen years, and that the reports of Drs. Suarez and Farney similarly reported smoking histories of seventeen years. The administrative law judge also noted that the treatment records reported longer smoking histories.[15] *Id.* After noting that claimant testified that the smoking histories reported in

[14] As set forth above, Dr. Suarez opined that claimant's chronic obstructive pulmonary disease and hypoxemia could be due, in part, to coal mine dust exposure because the degree and severity of claimant's disease "seems somewhat out of proportion" to the years and extent that claimant smoked. Director's Exhibit 11.

[15] In 2012, Dr. Suarez recorded that claimant smoked three-fourths to one pack of cigarettes per day for seventeen years, or twelve and three-quarters to seventeen pack-years. Claimant's Exhibit 1. Dr. Farney recorded one pack per day for seventeen years,

the treatment records were erroneous, the administrative law judge found claimant's testimony credible. *Id.*, *citing* Hearing Tr. at 48-49. However, as argued by employer, the administrative law judge did not adequately explain why he found that claimant's testimony was more credible than the treatment records regarding the length, or intensity, of claimant's smoking history, especially in light of claimant's testimony that he did not know what a pack-year was. *See Wojtowicz*, 12 BLR at 1-165; Employer's Brief at 11, *citing* Hearing Tr. at 49. Thus, the administrative law judge must reconsider the evidence regarding claimant's smoking history in accordance with the APA.

Because we have vacated the administrative law judge's finding that claimant established the existence of legal pneumoconiosis, we must also vacate the administrative law judge's finding that claimant is totally disabled due to legal pneumoconiosis, pursuant to 20 C.F.R. §718.204(c). On remand, after the administrative law judge considers whether the evidence establishes clinical pneumoconiosis arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a), 718.203(b), or legal pneumoconiosis at 20 C.F.R. §718.202(a)(4),[16] then he must determine whether the evidence establishes that clinical or legal pneumoconiosis is a substantially contributing cause of claimant's total disability, at 20 C.F.R. §718.204(c).

---

equating to a seventeen pack-year smoking history. Claimant's Exhibit 1; Employer's Exhibit 5. The pulmonary function test reports obtained by Dr. Gagon in 2010 and 2012 include notations that claimant smoked one pack per day for twenty years, and two packs a day for twenty years, equating to twenty pack-years and forty pack-years, respectively. Employer's Exhibit 7. In 2005, Dr. Pearce, a treating physician, recorded that claimant has a "50+" pack year history of tobacco abuse, ending around 1990 to 1995. Employer's Exhibit 7. In 2005, Dr. Walker, a treating physician, recorded that claimant smoked at least two packs a day for twenty-five to thirty years, equating to a fifty to sixty pack-year smoking history. Employer's Exhibit 7.

[16] With regard to the issue of whether claimant has legal pneumoconiosis, the existence and cause of the disease are subsumed in one analysis. *See Henley v. Cowan & Co.*, 21 BLR 1-147 (1999). Thus, if the administrative law judge finds that the medical opinion evidence establishes the existence of legal pneumoconiosis, he is not required to separately determine the cause of the pneumoconiosis at 20 C.F.R. §718.203, as his finding at 20 C.F.R. §718.202(a)(4) necessarily subsumes that inquiry. *See Henley*, 21 BLR at 1-151; 20 C.F.R. §718.201.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge