BRB No. 04-0401 BLA

RONNIE LEE BOWER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MYSTIC ENERGY, INCORPORATED	)	DATE ISSUED: _____
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
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 of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

John Cline (Lay Representative), Piney View, West Virginia, for claimant.

Robert Weinberger (Employment Programs Litigation Unit), Charleston, West Virginia, for employer/carrier.

Rita Roppolo (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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, HALL and BOGGS, Administrative Appeals Judges.

SMITH, Administrative Appeals Judge:

Employer/carrier (hereinafter, carrier) appeals the Decision and Order (03-BLA-5510) of Administrative Law Judge Daniel L. Leland awarding benefits on a subsequent claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). The administrative law judge credited claimant with thirty-two years of coal mine employment based on the parties' stipulation and adjudicated this subsequent claim pursuant to the regulations contained in 20 C.F.R. Part 718.[1] The administrative law judge found the newly submitted evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found the newly submitted evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge found the evidence sufficient to establish a "material" change in conditions pursuant to 20 C.F.R. §725.309.[2] On the merits, the administrative law judge found the evidence sufficient 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). Further, the administrative law judge found the evidence sufficient to establish total 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, carrier challenges the administrative law judge's finding that the evidence is sufficient to establish total disability on the merits at 20 C.F.R. §718.204(b). Carrier also challenges the administrative law judge's finding that the evidence is sufficient to establish total disability due to pneumoconiosis on the merits at 20 C.F.R. §718.204(c). Claimant

[1]Claimant's initial claim was filed on October 8, 1998. Director's Exhibit 1. This claim was denied by the Department of Labor on February 25, 1999 because claimant failed to establish the existence of pneumoconiosis and total disability. *Id*. Because claimant did not pursue this claim any further, the denial became final. Claimant's most recent claim was filed on March 22, 2001. Director's Exhibit 3.

[2]Although the administrative law judge correctly stated that claimant's 2001 claim is a subsequent claim under the amended regulations at 20 C.F.R. §725.309, he found the evidence sufficient to establish a "material" change in conditions. The pertinent regulations provide that a subsequent claim shall be denied unless claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final. 20 C.F.R. §725.309(d). Nonetheless, the administrative law judge's reference to a "material" change in conditions does not impact his finding pursuant to 20 C.F.R. §725.309. Moreover, carrier does not challenge the administrative law judge's finding pursuant to 20 C.F.R. §725.309.

responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), contends that employer's assertions at 20 C.F.R. §§718.204(b) and 718.204(c) are without merit.[3]

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, carrier contends that the administrative law judge erred in finding the evidence sufficient to establish total disability on the merits at 20 C.F.R. §718.204(b). In considering the issue of total disability, the administrative law judge weighed all of the contrary probative evidence of record together, like and unlike. Of the five pulmonary functions studies of record, two studies yielded qualifying values and three studies yielded non-qualifying values.[4] All five of the arterial blood gas studies of record yielded non-qualifying values. The record does not contain evidence of cor pulmonale with right-sided congestive heart failure. With regard to the medical opinions of record, Dr. Mullins opined that claimant suffers from a 25% pulmonary impairment. Director's Exhibit 15. Similarly, the West Virginia Occupational Pneumoconiosis Board opined that claimant suffers from no more than a 25% pulmonary functional impairment.[5] Claimant's Exhibit 3. Dr. Zaldivar opined that claimant suffers from a moderate impairment and is capable of performing his

[3]Since the administrative law judge's length of coal mine employment finding and his findings that the evidence is sufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R §725.309, as well as the existence of pneumoconiosis arising out of coal mine employment on the merits pursuant to 20 C.F.R. §§718.202(a) and 718.203(b), are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[4]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 and C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i) and (ii).

[5]Although both Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board opined that claimant suffers from a 25% pulmonary impairment, they did not indicate whether claimant's impairment would render him incapable of performing his usual coal mine employment. Director's Exhibit 15; Claimant's Exhibit 3.

usual coal mine work or work requiring similar exertion.[6] Director's Exhibit 29. In contrast, in a report dated June 19, 2003, Dr. Rasmussen opined that claimant does not retain the pulmonary capacity to perform his last coal mine job with its attendant requirement for heavy and some very heavy manual labor. Claimant's Exhibit 1. In reports dated December 14, 1998 and December 17, 1998, Dr. Rasmussen opined that claimant's minimal to moderate respiratory impairment renders claimant incapable of performing heavy or very heavy manual labor. Director's Exhibit 1. Based on the pulmonary function studies and Dr. Rasmussen's opinion, the administrative law judge found the evidence sufficient to establish total disability.[7]

Carrier asserts that the administrative law judge erred in substituting his opinion for that of the physicians. Carrier's assertion is based on the premise that the administrative law judge, in considering the evidence relevant to the issue of total disability at 20 C.F.R. §718.204(b)(2)(i), "re-evaluated the tests results of the pulmonary function studies." Employer's Brief at 2-3. The record consists of pulmonary function studies dated December 7, 1998, June 12, 2001, December 13, 2002, August 13, 2002 and June 19, 2003. Director's Exhibits 1, 18, 29; Claimant's Exhibits 1, 3. The administrative law judge determined that "[t]he pulmonary function studies of December 7, 1998 are nonqualifying but the more recent pulmonary function studies have reduced values and clearly show a decline in the miner's pulmonary condition." Decision and Order at 6-7. In considering the four newly submitted studies dated June 12, 2001, December 13, 2002, August 13, 2002 and June 19, 2003, the administrative law judge stated:

> The prebronchodilator values from the June 12, 2001 and June 19, 2003 pulmonary function studies are qualifying; the remaining studies are nonqualifying. However, the FEV1 values from all the pulmonary function studies are uniformly low even after bronchodilators were given, rarely exceeding 70% of the predicted values.

Id. at 6. Although it is within the administrative law judge's discretion, as the trier-of-fact, to

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[6]The administrative law judge found that Dr. Zaldivar's opinion, that claimant can do his usual coal mine work only if he takes bronchodilators, is "an extremely speculative conclusion." Decision and Order at 6; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

[7]The administrative law judge stated that "[n]one of the blood gas studies is qualifying and there is no evidence of cor pulmonale." Decision and Order at 6; *see* 20 C.F.R. §718.204(b)(2)(ii) and (iii).

determine the weight and credibility to be accorded the medical experts, *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to assess the evidence of record and draw his own conclusions and inferences from it, *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), the interpretation of medical data is for the medical experts, *Marcum v. Director*, OWCP, 11 BLR 1-23 (1987). In this case, the administrative law judge did not find that the qualifying pulmonary function studies outweigh the non-qualifying pulmonary function studies. Rather, the administrative law judge found that the values produced by the pulmonary function studies, along with Dr. Rasmussen's opinion, established total disability. Thus, to the extent that the administrative law judge exceeded his expertise by interpreting the values produced by the newly submitted pulmonary function studies, we hold that the administrative law judge erred in substituting his opinion for that of the physicians. *Marcum*, 11 BLR at 1-24.

Carrier also asserts the administrative law judge erred in relying on Dr. Rasmussen's disability opinion at 20 C.F.R. §718.204(b)(2)(iv). Specifically, carrier asserts that Dr. Rasmussen's disability opinion is not reasoned because it is based on non-qualifying objective tests. Contrary to carrier's assertion, an administrative law judge may not reject a medical opinion that a miner is totally disabled because the physician based his conclusions on non-qualifying objective test results. *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). As previously noted, Dr. Rasmussen opined that claimant suffers from a totally disabling pulmonary impairment. Claimant's Exhibit 1. Dr. Rasmussen administered an arterial blood gas study and a pulmonary function study on June 19, 2003. Claimant's Exhibit 1. The arterial blood gas study yielded non-qualifying values[8] while the pulmonary function study yielded qualifying pre-bronchodilator values and non-qualifying post-bronchodilator values. *Id*. In addition to the objective tests, Dr. Rasmussen's opinion is also based on a physical examination, a smoking history, a coal mine employment history and symptoms. Thus, since the administrative law judge reasonably relied on Dr. Rasmussen's disability opinion, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller*, 6 BLR at 1-1294, we reject carrier's assertion that Dr. Rasmussen's disability opinion is not reasoned because it is based on non-qualifying objective evidence. Consequently, we affirm the administrative law judge's weighing of the conflicting medical opinions. *See* 20 C.F.R. §718.204(b)(2)(iv). Nonetheless, in view of our holding that the

[8]Although the administrative law judge did not specifically refer to the values produced by the June 19, 2003 arterial blood gas study, he indicated that he considered that study. In the June 19, 2003 report, Dr. Rasmussen noted that "[t]here was minimal resting hypoxia." Claimant's Exhibit 1. In the June 19, 2003 arterial blood gas study, Dr. Rasmussen noted "[m]inimal resting hypoxia." *Id*.

administrative law judge erred in substituting his opinion for that of the physicians in considering the pulmonary function studies of record, *see* 20 C.F.R. §718.204(b)(2)(i); *Marcum*, 11 BLR at 1-24, we vacate the administrative law judge's finding that the evidence is sufficient to establish total disability on the merits at 20 C.F.R. §718.204(b) and remand the case for further consideration of the evidence. In addition, on remand, the administrative law judge must again weigh together all of the contrary probative evidence of disability, like and unlike, to determine whether the evidence is sufficient to establish total disability. *Fields*, 10 BLR at 1-21; *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*).

Next, carrier contends that the administrative law judge erred in finding the evidence sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). The administrative law judge considered the reports of Drs. Mullins, Rasmussen, Zaldivar and the West Virginia Occupational Pneumoconiosis Board. Dr. Zaldivar opined that claimant does not suffer from coal workers' pneumoconiosis and is capable of performing his usual work or work requiring similar exertion. Director's Exhibit 29. In contrast, Dr. Mullins opined that coal workers' pneumoconiosis contributes 100% to claimant's impairment. Director's Exhibit 15. Further, the West Virginia Occupational Pneumoconiosis Board opined that claimant's pulmonary impairment is attributable to pneumoconiosis. Claimant's Exhibit 3. Lastly, Dr. Rasmussen opined that coal dust exposure is a major contributing factor to claimant's impaired function. Claimant's Exhibits 1, 3. The administrative law judge considered the conflicting medical opinions and stated:

> Dr. Mullins, Dr. Rasmussen and the [West Virginia Occupational Pneumoconiosis] Board attribute claimant's pulmonary impairment to his pneumoconiosis. Dr. Zaldivar stated that claimant's pulmonary condition is a result of asthma but as he did not diagnose pneumoconiosis, his opinion on etiology can not be credited.

Decision and Order at 7. Based on a determination that the opinions of Drs. Mullins, Rasmussen and the West Virginia Occupational Pneumoconiosis Board outweigh Dr. Zaldivar's contrary opinion, the administrative law judge found that claimant established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).

In view of our decision to vacate the administrative law judge's finding that the evidence is sufficient to establish total disability on the merits at 20 C.F.R. §718.204(b), we also vacate the administrative law judge's finding that the evidence is sufficient to establish total disability due to pneumoconiosis on the merits at 20 C.F.R. §718.204(c). Nonetheless, in the interest of judicial economy, we will address carrier's assertions of error with regard to the issue of disability causation.

Carrier asserts that the administrative law judge erred in relying on the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board on the issue of disability causation because the administrative law judge did not "credit" their opinions on the issue of total disability. Carrier's Brief at 4. In concluding that claimant established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), the administrative law judge stated that "Dr. Mullins, Dr. Rasmussen and the [West Virginia Occupational Pneumoconiosis] Board attribute claimant's pulmonary impairment to his pneumoconiosis." Decision and Order at 7. However, neither Dr. Mullins nor the West Virginia Occupational Pneumoconiosis Board rendered an opinion that claimant's 25% pulmonary impairment was disabling. Director's Exhibit 15; Claimant's Exhibit 3. In considering the issue of total disability, the administrative law judge weighed the conflicting medical opinions and discounted the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board. The administrative law judge specifically stated that "Dr. Mullins and the [West Virginia Occupational Pneumoconiosis] Board assessed a 25% pulmonary impairment but there is no analysis as to whether this degree of impairment would preclude claimant from performing his last coal mine work." Decision and Order at 6. The Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), requires 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); *see also Hall v. Director, OWCP*, 12 BLR 1-80 (1988); *Shaneyfelt v. Jones & Laughlin Steel Corp.*, 4 BLR 1-144 (1981). In this case, the administrative law judge did not provide a basis for finding that the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board satisfy or support, along with Dr. Rasmussen's opinion, claimant's burden at 20 C.F.R. §718.204(c). Thus, if reached on remand, the administrative law judge must explain why he relied on the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board in finding that claimant established total disability due to pneumoconiosis. *Wojtowicz*, 12 BLR at 1-165.

Citing *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), carrier additionally argues that the administrative law judge erred in discrediting Dr. Zaldivar's disability causation opinion on the basis that Dr. Zaldivar opined that claimant did not suffer from pneumoconiosis since, employer asserts, Dr. Zaldivar stated that his disability opinion would not change, even if he assumed that claimant suffers from pneumoconiosis. Carrier's Brief at 4. Carrier specifically argues that "[d]espite [the administrative law judge's] criticism of Dr. Zaldivar's opinion on the issue of total disability, the fact is that the FEV1 values in each of the pulmonary function studies of record improved after the use of bronchodilators, ranging from 6.6% to 19.6% in the study conducted by Dr. Rasmussen." *Id.* The Director, however, contends that Dr. Zaldivar's opinion remains fatally flawed on the issue of disability causation. Specifically, the Director asserts that "while [Dr. Zaldivar] provided a caveat on the issue of disability, he did not do so on the issue of disability-

causation, *i.e.*, he did not state that he would have found no connection between the miner's disability and his pneumoconiosis even if the miner actually suffered from that disease." Director's Brief at 2. In a March 18, 2002 report, Dr. Zaldivar stated that "[e]ven if [claimant] were found to have early simple coal worker's (sic) pneumoconiosis, which in my opinion he does not have, my opinion regarding his pulmonary capacity and ability to work when treated with bronchodilators would remain the same as I have given here." Director's Exhibit 29.

In *Compton*, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, considered whether an administrative law judge erred in discrediting Dr. Fino's disability causation opinion because Dr. Fino did not diagnose pneumoconiosis. Dr. Fino opined that the miner's moderate respiratory impairment was due to cigarette smoking. Dr. Fino also opined that the miner did not suffer from coal workers' pneumoconiosis. In addition, Dr. Fino opined that he would still conclude that it was cigarette smoking, and not coal dust exposure, that caused the miner's disability even if he assumed that the miner had coal workers' pneumoconiosis. The court noted that the administrative law judge discredited Dr. Fino's opinion because Dr. Fino had not examined the miner. However, since this reason did not relate to the issue of causation, the court held that the administrative law judge failed to offer a sufficient reason for discrediting Dr. Fino's disability causation opinion.

The facts in the instant case are distinguishable from the facts in *Compton*. In *Compton*, Dr. Fino only opined that the miner did not have *coal workers'* pneumoconiosis. He did not additionally opine that legal pneumoconiosis was absent, and thus, his opinion was not clearly at odds with the administrative law judge's finding at 20 C.F.R. §718.202(a). Here, Dr. Zaldivar opined that claimant did not have *either* medical pneumoconiosis or legal pneumoconiosis.[9] Moreover, in the instant case, Dr. Zaldivar indicated that even if he assumed that claimant suffers from pneumoconiosis, his *disability* opinion, rather than his *disability causation* opinion, would not change. Director's Exhibit 29. Dr. Zaldivar's conclusion, that the existence of pneumoconiosis would not change his disability opinion, is not pertinent to the issue of disability causation.

We find the Fourth Circuit's holding in *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002), to be controlling in this case. In *Scott* the court considered whether an administrative law judge erred in discrediting the disability causation opinions of Drs. Dahhan and Castle because they did not diagnose pneumoconiosis. Drs. Dahhan and Castle opined that the miner did not suffer from medical pneumoconiosis or legal pneumoconiosis. Drs. Dahhan and Castle also stated that their opinions would not change

[9]Dr. Zaldivar opined that "[t]here is no evidence of coal worker's (sic) pneumoconiosis nor (sic) any dust disease of the lungs in this case." Director's Exhibit 29.

even if they assumed the miner had pneumoconiosis. The court held that even if the administrative law judge provided specific and persuasive reasons for doing so, he could only give, at most, little weight to the opinions of Drs. Dahhan and Castle because they were in direct contradiction to the administrative law judge's finding that the miner suffered from pneumoconiosis arising out of his coal mine employment. As in *Scott*, Dr. Zaldivar's opinion, in the instant case, is in direct contradiction to the administrative law judge's finding that claimant established pneumoconiosis. Thus, we reject carrier's assertion that the administrative law judge erred in discrediting Dr. Zaldivar's disability causation opinion because Dr. Zaldivar opined that claimant does not suffer from pneumoconiosis. Nonetheless, in view of our instruction that the administrative law judge reconsider the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board, the administrative law judge must reconsider all the relevant evidence at 20 C.F.R. §718.204(c) in accordance with the APA, if reached.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

I concur.

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JUDITH S. BOGGS
Administrative Appeals Judge

HALL, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to vacate the administrative law judge's findings at 20 C.F.R. §§718.204(b) and 718.204(c) and remand the case for further consideration of the evidence. With regard to the issue of total disability at 20 C.F.R. §718.204(b), carrier argues that the administrative law judge substituted his opinion for that of the physicians by interpreting the results of the pulmonary function studies. After weighing all of the relevant evidence together, like and unlike, the administrative law judge found that claimant established total disability at 20 C.F.R. §718.204(b) based on Dr. Rasmussen's opinion that claimant does not retain the pulmonary capacity to perform his last

coal mine job with its attendant requirement for heavy and some very heavy manual labor. Claimant's Exhibit 1. In so finding, the administrative law judge relied on the fact that Dr. Rasmussen's opinion is bolstered by the pulmonary function studies since "the FEV1 values from all the pulmonary function studies are uniformly low even after bronchodilators were given, rarely exceeding 70% of the predicted values." Decision and Order at 6. An administrative law judge may assess the evidence of record and draw his own conclusions and inferences from it. *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Here, as the Director points out, the administrative law judge reasonably concluded that a miner who has only 70% of predicted lung function has some degree of respiratory impairment. Thus, I would reject carrier's assertion that the administrative law judge substituted his opinion for that of the physicians by interpreting the results of the pulmonary function studies.

As does the majority, I would reject carrier's specific assertion that Dr. Rasmussen's disability opinion is not reasoned because it is based on non-qualifying objective tests. As the majority noted, an administrative law judge may not reject a medical opinion that a miner is totally disabled because the physician based his conclusions on non-qualifying objective test results. *Fuller v. Gibraltar Coal Corp*., 6 BLR 1-1291 (1984). As I would reject each of carrier's specific contentions, I would hold that substantial evidence supports the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(b).

Turning to the issue of total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), carrier asserts that the administrative law judge erred in relying on the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board since he did not rely on their opinions on the issue of total disability at 20 C.F.R. §718.204(b). The administrative law judge considered the opinions of Drs. Mullins, Rasmussen, Zaldivar and the West Virginia Occupational Pneumoconiosis Board. Dr. Mullins, Dr. Rasmussen and the West Virginia Occupational Pneumoconiosis Board opined that pneumoconiosis contributes to claimant's respiratory impairment while Dr. Zaldivar opined that claimant does not suffer from pneumoconiosis and is capable of performing his usual coal mine work. Consistent with the majority's opinion, I would hold that the administrative law judge properly discredited Dr. Zaldivar's opinion because Dr. Zaldivar opined that claimant does not suffer from pneumoconiosis. *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002). However, I would further hold that as there is no credible opinion of record to contradict the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board with respect to the cause of claimant's respiratory impairment, these opinions corroborate Dr. Rasmussen's opinion that pneumoconiosis contributes to claimant's disabling respiratory impairment. *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984);

Newland v. Consolidation Coal Co., 6 BLR 1-1286 (1984). Thus, I would reject carrier's assertion that the administrative law judge erred in relying on the opinions of Dr. Mullins and the West Virginia Occupational Pneumoconiosis Board on the issue of total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) merely because he did not rely on their opinions on the issue of total disability at 20 C.F.R. §718.204(b). Having rejected each of carrier's specific contentions, I would further hold that substantial evidence supports the administrative law judge's finding that claimant established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).

In light of the foregoing, I would affirm the administrative law judge's award of benefits.

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BETTY JEAN HALL
Administrative Appeals Judge