BRB No. 07-0456 BLA

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| Claimant-Respondent | ) | |
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| v. | ) | |
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| SWITCH ENERGY CORPORATION | ) | |
| | ) | |
| and | ) | DATE ISSUED: 02/29/2008 |
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| KENTUCKY COAL PRODUCERS SELF-INSURANCE FUND | ) | |
| | ) | |
| Employer/Carrier-Petitioners | ) | |
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| 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 A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (04-BLA-6363) of Administrative Law Judge Daniel A. Sarno, Jr., 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). Claimant's prior application for benefits, filed on July 7,

1994, was finally denied on September 18, 2001, because claimant failed to establish the existence of a totally disabling respiratory impairment. Director's Exhibit 1 at 1-5, 26-34, 72-85, 202-216. On November 4, 2002, claimant filed his current application, his third, which is considered a "subsequent claim for benefits" because it was filed more than one year after the final denial of a previous claim. 20 C.F.R. §725.309(d); Director's Exhibit 3.

In a Decision and Order dated January 19, 2007, the administrative law judge credited claimant with at least ten years of coal mine employment,[1] ending in 1986, and found that the medical evidence developed since the prior denial of benefits established that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore found that claimant demonstrated a change in an applicable condition of entitlement as required by 20 C.F.R. §725.309(d). Reviewing the entire record, the administrative law judge found that the evidence established the existence of both clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), (4), and legal pneumoconiosis in the form of obstructive lung disease due in part to coal dust exposure at 20 C.F.R. §§718.202(a)(4), 718.203(b). The administrative law judge further found that claimant is totally disabled and that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in his analysis of the medical opinion evidence relevant to the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and the cause of claimant's totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Claimant responds, urging affirmance of the administrative law judge's award of benefits. Employer filed a reply to claimant's response. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.[2]

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[1] The Board will apply the case law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mine industry in Kentucky. Director's Exhibit 4; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

[2] The administrative law judge's finding of at least ten years of coal mine employment, and his findings that claimant established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), (4), and a totally disabling respiratory impairment at 20 C.F.R. §§718.204(b), 725.309(d), are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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, and in accordance with applicable law. 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 demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Initially, we address employer's contention that in finding the existence of legal pneumoconiosis established at 20 C.F.R. §718.202(a)(4), the administrative law judge provided "[n]o valid reason . . . for "giving 'controlling weight' to [the medical opinions of] Drs. Penman and Baker . . . ." Employer's Brief at 29. We disagree.

In evaluating the evidence relevant to the existence of legal pneumoconiosis, the administrative law judge discussed all of the medical opinions in detail, including those submitted with the prior claims, and explained his credibility determination regarding each opinion. Decision and Order at 44-48. Contrary to employer's argument, with respect to the opinions of the physicians who diagnosed a pulmonary impairment and addressed its cause, the administrative law judge permissibly accorded little weight to the opinions of Drs. Wright, Broudy, Williams, Caffrey, Branscomb, and Dahhan, who attributed claimant's impairment to causes other than coal dust, because these physicians did not provide sufficient rationale and explanation for their exclusion of coal mine dust as a contributing factor to claimant's pulmonary impairment. *See* 20 C.F.R. §718.202(a)(4); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); Decision and Order at 44-48, 49-50.

By contrast, the administrative law judge found, within his discretion, that Drs. Baker and Penman offered well-reasoned opinions in support of their conclusions that claimant's chronic obstructive pulmonary disease (COPD) and chronic bronchitis were due in part to coal dust exposure. 20 C.F.R. §718.201(a)(2); *see Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 49. Weighing the old and new medical opinion evidence together, the administrative law judge thus concluded that the recent, probative, well-reasoned opinion of Dr. Baker, that claimant suffers from COPD and chronic bronchitis due to a combination of smoking and

coal dust exposure, as supported by the opinion of Dr. Penman, outweighed the contrary medical opinions of record. Decision and Order at 49-50.

It is within the purview of the administrative law judge to weigh the evidence, draw inferences, and determine credibility. *Crisp*, 866 F.2d at 185, 12 BLR at 2-129. The administrative law judge examined each medical opinion "in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based," *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103, and explained whether the diagnoses contained therein constituted reasoned medical judgments under 20 C.F.R. §718.202(a)(4). Moreover, employer has not challenged the administrative law judge's credibility determinations on appeal. We, therefore, reject employer's assertion that the administrative law judge did not give a valid reason for crediting the opinions of Drs. Baker and Penman, and affirm the administrative law judge's finding that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Employer next challenges the administrative law judge's determination, pursuant to 20 C.F.R. §718.204(c), that the medical evidence of record establishes that claimant's totally disabling respiratory impairment is due to pneumoconiosis. As the administrative law judge correctly stated, a miner is totally disabled due to pneumoconiosis if pneumoconiosis is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c); *see also Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 610-11, 22 BLR 2-288, 2-303 (6th Cir. 2001).

Pneumoconiosis is a "substantially contributing cause" of the miner's disability if pneumoconiosis has a "material adverse effect" on the miner's respiratory or pulmonary condition or "[m]aterially worsens" a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment. 20 C.F.R. §718.204(c)(1); *see Kirk*, 264 F.3d at 610-11, 22 BLR at 2-303; *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-17 (2003); Decision and Order at 13.

In evaluating the evidence relevant to the cause of claimant's respiratory disability at 20 C.F.R. §718.204(c), the administrative law judge initially found that the more probative evidence was the more recent evidence developed in connection with the current claim, consisting of the opinions of Drs. Baker, Dahhan, and Fino, all Board-certified pulmonary specialists, who most recently examined claimant in this case. Decision and Order at 51. The administrative law judge accorded the greatest weight to the opinion of Dr. Baker, that claimant's pulmonary impairment is due to both coal dust exposure and smoking, because he found Dr. Baker's opinion better reasoned and better documented than the contrary opinions of Drs. Dahhan and Fino. Decision and Order at 51-53. In support of his determination to accord Dr. Baker "full weight," the administrative law judge stated:

> ". . . Dr. Baker opined that Claimant's impairment was fully caused by Claimant's pneumoconiosis, chronic bronchitis, chronic obstructive pulmonary disease, old pulmonary tuberculosis, and sick sinus syndrome. Dr. Baker stated that Claimant's impairment encompassed Claimant's decreased FEV1, chronic bronchitis and coal workers' pneumoconiosis 1/0. Moreover, Dr. Baker stated that when he considered the lengths of Claimant's smoking and dust exposure histories, he found that at least fifty percent of Claimant's condition was attributable to Claimant's coal mine employment."

Director's Exhibit 16; Decision and Order at 51. The administrative law judge also referenced Dr. Baker's deposition testimony, in which Dr. Baker stated that scientific studies involving decreased pulmonary function showed that, on average, miners experience a ".5 to 1 cm" decrease in their FEV1 values while smokers experience, a "1 cm" decrease in their FEV1 values. Claimant's Exhibit 5 at 8; Decision and Order at 11. In addition, the administrative law judge noted Dr. Baker's explanation that the "additive" or "synergistic effect" between coal dust exposure and cigarette smoking results in an individual's condition being worse if he is exposed to both coal dust and cigarette smoke, than if he had had only one type of exposure. Claimant's Exhibit 5 at 8; Decision and Order at 11.

Employer contends that the administrative law judge's finding, pursuant to 20 C.F.R. §718.204(c), that pneumoconiosis is a substantially contributing cause of the miner's disabling pulmonary impairment, is not supported by substantial evidence. Employer asserts that the administrative law judge erred by failing to consider all of the relevant evidence of record, including that submitted with the prior claims, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). Employer further asserts that Dr. Baker's opinion is insufficient to carry claimant's burden of proof. Employer contends that, by contrast, Drs. Dahhan and Fino offer reasoned opinions attributing claimant's disabling pulmonary impairment to his history of smoking, tuberculosis, and lung resection.

Initially, we reject employer's contention that the administrative law judge failed to consider all relevant evidence in finding disability causation established at 20 C.F.R. §718.204(c). Employer's Brief at 18-21. Specifically, employer contends that the administrative law judge provided "no valid reason for discounting the prior medical opinions" and "pushed aside the relevant prior evidence which was previously credited and which supports Drs. Dahhan and Fino," and outweighs the opinion of Dr. Baker. Employer's Brief at 18-21.

In considering the evidence at 20 C.F.R. §718.204(c), the administrative law judge correctly noted that the regulation provides that "the cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical report." 20 C.F.R. §718.204(c)(2); Decision and Order at 51. The administrative law judge further noted that none of the physicians who offered opinions in claimant's two prior claims had opined that claimant suffered from a totally disabling respiratory impairment. Decision and Order at 51. By contrast, the evidence developed with the current claim establishes that claimant's respiratory condition has deteriorated and is now totally disabling. Decision and Order at 51. Thus, after considering all of the medical opinions of record, the administrative law judge permissibly concluded that relevant to the issue of disability causation, the recent opinions of Drs. Baker, Dahhan, and Fino were of greater probative value than the opinions of those physicians who evaluated claimant approximately seven years before the filing of the current claim. *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Parsons v. Wolf Creel Collieries*, 23 BLR 1-29, 1-35 (2004)(*en banc*)(McGranery, J., concurring and dissenting); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004)(*en banc*); Decision and Order at 51, 53.

We next address employer's contention that at 20 C.F.R. §718.204(c), the administrative law judge erred in finding Dr. Baker's opinion to be "well-documented and well-reasoned." Decision and Order at 51; Employer's Brief at 25-26. Employer specifically contends that the administrative law judge failed to consider that Dr. Baker's opinion is based upon an incomplete medical history and erroneous smoking and employment histories; that Dr. Baker diagnosed complicated pneumoconiosis, contrary to the administrative law judge's own finding; and that Dr. Baker's disability causation opinion is based on assumptions and lacks explanation. Employer's Brief at 21-25. Employer's contentions lack merit.

In evaluating Dr. Baker's opinion, the administrative law judge thoroughly discussed Dr. Baker's written report and deposition testimony, noting, correctly, that Dr. Baker had considered an employment history of seventeen years and a smoking history of one-half pack per day for twenty-one or twenty-two years, or eleven to twelve pack years, as the bases for his conclusion that claimant's pulmonary impairment was due to both exposures.[3] Decision and Order at 9, 11; Director's Exhibit 16; Claimant's Exhibit 5 at

[3] The record reflects that the smoking and employment histories relied upon by Dr. Baker are similar to those relied upon by employer's experts. The administrative law judge noted, correctly, that Dr. Dahhan relied on an employment history of seventeen years and a smoking history of three-quarters of a pack per day, or approximately fifteen pack years. Decision and Order at 12, 14 n.26; Employer's Exhibit 3 at 6-7. Dr. Fino relied on an employment history of twenty years and a smoking history of less than one pack per day for twenty-two years. Decision and Order at 15; Director's Exhibit 18.

7-8. Thus, there is no merit to employer's assertion that the administrative law judge did not consider that Dr. Baker based his conclusions on smoking and employment histories that differed from his own findings, *i.e.*, that claimant established *at least* ten years of coal mine employment, ending in 1986, and had smoked one-half to three-quarters of a pack per day, or ten to fifteen pack years, quitting by 1985.[4]

Regarding Dr. Baker's knowledge of claimant's medical history, the administrative law judge noted that Dr. Baker stated that he was aware that claimant had suffered from tuberculosis in the early 1960's and, as a result, had undergone a lung resection.[5] Decision and Order at 9-12; Director's Exhibit 16; Claimant's Exhibit 1. In addition, contrary to employer's contention, the administrative law judge noted, correctly, that Dr. Baker acknowledged that he did not know how much of claimant's lung had been removed, and, therefore, could not determine the exact effect of the lung resection on claimant's respiratory condition. Decision and Order at 11; Claimant's Exhibit 5 at 10. However, the administrative law judge also found that Dr. Baker had addressed the potential effect of a lung resection, explaining that if the lung resection had significantly affected claimant's respiratory condition, it would have caused a restrictive defect, while claimant suffered from an obstructive defect. Decision and Order at 11; Claimant's Exhibit 5 at 10. In addition, the administrative law judge noted that while Dr. Baker stated that he was also not aware of claimant's history of histoplasmosis, when informed of claimant's history, Dr. Baker explained that patients who contract the condition can develop terrible scarring, or can have no residual effect at all, and that claimant's x-rays did not reveal the type of severe calcifications usually associated with histoplasmosis. Decision and Order at 11-12; Claimant's Exhibit 1. We, therefore, reject employer's assertions that Dr. Baker's opinion was based on an incomplete medical history, which the administrative law judge failed to consider.

Further, contrary to employer's argument, the administrative law judge fully considered Dr. Baker's opinion that, in addition to simple pneumoconiosis, claimant's x-ray revealed a Category B opacity of complicated pneumoconiosis, noting Dr. Baker's

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[4] There is no merit to employer's additional contention that the administrative law judge failed to reconcile the smoking and employment histories given by claimant in his prior claims, with those he gave in the current claim. The administrative law judge specifically found that "slight differences and additional information detailed in Claimant's testimony in his prior claims regarding his employment and smoking history are not significant and therefore do not affect the Presiding Judge[']s findings . . . ." Decision and Order at 16 n.27; Employer's Brief at 25 n.2.

[5] As summarized by the administrative law judge, the record reflects that claimant underwent a left lower lobectomy. Decision and Order at 10, 12, 15.

concession that there were other possible etiologies for the opacity and that only a biopsy could definitively establish the diagnosis.[6] Decision and Order at 10-11; Claimant's Exhibit 1 at 12. Thus, there is no merit to employer's contention that the administrative law judge failed to consider Dr. Baker's "misdiagnosis" of complicated pneumoconiosis.

Finally, we reject employer's assertion that Dr. Baker based his disability causation opinion on the mere assumption that coal dust had caused claimant's disabling pulmonary condition.[7] Employer's Brief at 26. Rather, substantial evidence supports the administrative law judge's finding that Dr. Baker based his opinion on claimant's employment, smoking, and medical histories, the physical findings on examination, the x-ray, pulmonary function, and blood gas study results, and scientific studies of the relative impact of coal dust and smoking on pulmonary impairment. *See Gross*, 23 BLR at 1-17; Decision and Order at 9-12; Director's Exhibit 16; Claimant's Exhibit 1. Moreover, the administrative law judge found that Dr. Baker had provided a rationale for his opinion that claimant's pulmonary impairments were not caused by claimant's lung resection. Decision and Order at 47. Thus, the administrative law judge acted within his discretion in concluding that Dr. Baker's opinion was well-reasoned and well-documented, and supported a finding that claimant's pneumoconiosis is a substantially contributing cause of his disabling pulmonary impairment. 20 C.F.R. §718.204(c); *see Kirk*, 264 F.3d at 610-11, 22 BLR at 2-303; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Gross*, 23 BLR at 1-19-20; *Clark*, 12 BLR at 1-155; Decision and Order at 47, 51; Director's Exhibit 16; Claimant's Exhibit 5.

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[6] Employer contends that the administrative law judge erred in "ignor[ing]" Dr. Baker's lack of awareness that the mass had been biopsied and that the results "weigh[ed] against complicated pneumoconiosis and prove[d] histoplasmosis." Employer's Brief at 23. However, as the administrative law judge correctly found, Dr. Baker conceded that the mass could be due to a condition other than complicated pneumoconiosis, and Dr. Baker did not opine that claimant was disabled from complicated pneumoconiosis. Thus, the relevance of "this weakness in Dr. Baker's opinion" is unclear. Therefore, error, if any, in the fact that the administrative law judge did not discuss Dr. Baker's lack of knowledge of the biopsy results is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[7] In support of its contention, employer quotes Dr. Baker's deposition testimony that if an x-ray shows fibrosis with opacities, and the patient has a history of coal dust exposure or a history of a condition that could cause those opacities, "then we assume that is the cause." Employer's Brief at 23; Claimant's Exhibit 5 at 5-6. Employer has taken Dr. Baker's statement out of context to suggest that Dr. Baker assumed that the cause of claimant's impairment was coal dust exposure, whereas Dr. Baker was discussing the cause of the opacities seen on x-ray.

We next consider employer's contention that the administrative law judge erroneously discredited the opinions of Drs. Dahhan and Fino, and substituted his own judgment for that of the medical experts. The administrative law judge initially found that Dr. Dahhan is a Board-certified pulmonologist who opined that claimant suffers from clinical, but not legal, pneumoconiosis, and concluded that claimant's ventilatory impairment is primarily due to the effects of claimant's lung resection, with some contribution by smoking. Decision and Order at 12-15, 47-48, 51-52; Employer's Exhibit 3 at 10, 12-14. Contrary to employer's contention, the administrative law judge permissibly found that Dr. Dahhan's opinion, that claimant's pulmonary impairment was primarily due to his lung resection, was not supported by the evidence of record, and was inadequately explained, considering that the record reflected that claimant's lung resection was performed in the late 1960's, yet claimant's lung impairment had progressed over time and did not become disabling until sometime after his prior claim was adjudicated. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Gross*, 23 BLR at 1-19-20; *Clark*, 12 BLR at 1-155; Decision and Order at 50, 51. In addition, the administrative law judge permissibly accorded little weight to Dr. Dahhan's opinion, that smoking had also contributed to claimant's pulmonary impairment by causing him to develop chronic bronchitis, because the administrative law judge found Dr. Dahhan's conclusion to be inconsistent with the physician's additional statement that he was not able to diagnose chronic bronchitis in this case. *See Gross*, 23 BLR at 1-19-20; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); Decision and Order at 47, 51-52. We, therefore, reject employer's allegations of error and hold that the administrative law judge reasonably concluded that because Dr. Dahhan did not adequately explain how he was able to exclude pneumoconiosis as a significant contributing cause of claimant's pulmonary impairment, and because his opinions as to the relative contributions of claimant's lung resection and smoking history were internally inconsistent and unsupported by the evidence of record, Dr. Dahhan's opinion was entitled to less weight. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Gross*, 23 BLR at 1-19-20; *Clark*, 12 BLR at 1-155; Decision and Order at 52.

In evaluating Dr. Fino's opinion, that claimant's combined obstructive and restrictive impairment was due to claimant's 1968 lung resection and significant scarring caused by claimant's old tuberculosis, the administrative law judge permissibly found that Dr. Fino's opinion did not adequately account for the evidence of record, which reflected a more recent worsening of claimant's pulmonary condition. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Gross*, 23 BLR at 1-19-20; *Clark*, 12 BLR at 1-155; Decision and Order at 52; Director's Exhibit 18. Further, the administrative law judge found that Dr. Fino's additional statement that claimant's pulmonary condition was also consistent with tuberculosis, which results in bronchiectasis causing an obstructive abnormality, was unreasoned in light of the fact that Dr. Fino did not diagnose bronchiectasis and specifically stated that claimant has no history of bronchiectasis. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Gross*, 23 BLR at 1-19-20; *Clark*, 12 BLR at 1-

155; Decision and Order at 52-53; Director's Exhibit 18. Thus, the administrative law judge acted within his discretion in finding that, because Dr. Fino's conclusions as to the relative contributions to his pulmonary impairment of claimant's lung resection and old tuberculosis were inadequately explained, and because Dr. Fino had also provided no explanation for his conclusion that coal dust and smoking were not clinically significant contributing factors, Dr. Fino's opinion, like Dr. Dahhan's, was entitled to less weight. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Gross*, 23 BLR at 1-19-20; *Clark*, 12 BLR at 1-155.

It is within the purview of the administrative law judge to weigh the evidence, draw inferences, and determine credibility. *Crisp*, 866 F.2d at 185, 12 BLR at 2-129. The administrative law judge examined each medical opinion "in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based," *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103, and fully explained his reasons to accord greater weight to the opinion of Dr. Baker, than to the contrary opinions of Drs. Dahhan and Fino, under 20 C.F.R. §718.204(c). Because substantial evidence supports these findings, we affirm the administrative law judge's determination that the evidence establishes that claimant's pneumoconiosis is a substantially contributing cause of his totally disabling respiratory impairment.[8] 20 C.F.R. §718.204(c).

[8] In addition, as the administrative law judge provided several valid reasons for crediting the opinion of Dr. Baker, and for according less weight to the contrary opinions of Drs. Dahhan and Fino, we need not address employer's additional argument that the administrative law judge erred in also according less weight to the opinions of Drs. Dahhan and Fino because they did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983); Decision and Order at 52, 53; Employer's Brief at 28-32.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge