BRB No. 13-0222 BLA

WILLIAM A. YOUNG	)	
Claimant-Respondent	)	
v.	)	
APOGEE COAL COMPANY/ARCH OF ILLINOIS	)	
and	)	DATE ISSUED: 02/12/2014
ARCH COAL, INCORPORATED	)	
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 on Second Remand of William S. Colwell, Administrative Law Judge, United States Department of Labor.

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

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order on Second Remand (04-BLA-6288) of Administrative Law Judge William S. Colwell awarding benefits on a claim filed pursuant to the provisions of the Black Lung

Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] This case is before the Board for the third time.[2]

When this claim was most recently before the Board, pursuant to employer's appeal, the Board vacated the administrative law judge's findings that the evidence established the existence of legal pneumoconiosis[3] pursuant to 20 C.F.R. §718.202(a)(4), and that the miner's disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *Young v. Apogee Coal Co./Arch of Illinois*, BRB No. 10-0697 BLA, slip op. at 5-10 (Aug. 25, 2011) (unpub.). Specifically, the Board held that while the administrative law judge provided several valid reasons for discounting Dr. Renn's opinion, he also critically scrutinized Dr. Renn's opinion because he relied on medical articles that were not admitted into the record, while uncritically accepting Dr. Cohen's opinion on the same issue. *Id.* Thus, because the administrative law judge had acted inconsistently in his evaluation of the medical opinions relevant to the existence of legal

[1] Because this claim was filed before January 1, 2005, a recent amendment to the Act, which became effective on March 23, 2010, does not apply to this case. 30 U.S.C. §921(c)(4) (2012). Unless otherwise indicated, the relevant version of all regulations cited in this Decision and Order may be found in 20 C.F.R. Parts 718, 725 (2013).

[2] The complete procedural history of this case is detailed in the Board's last decision. *Young v. Apogee Coal Co./Arch of Illinois*, BRB No. 10-0697 BLA, slip op. at 1-3 (Aug. 25, 2011) (unpub.). In sum, in its initial decision, pursuant to claimant's appeal, the Board held that the administrative law judge erred in his application of the evidentiary limitations, pursuant to 20 C.F.R. §725.414. *W.A.Y.* [*Young*] *v. Apogee Coal Co./Arch of Illinois*, BRB No. 08-0643 BLA, slip op. at 3 (June 30, 2009) (unpub.). The Board therefore vacated the administrative law judge's denial of benefits, and instructed the administrative law judge to reconsider his findings at 20 C.F.R. §§718.202(a)(4) and 718.204(c), in light of the possibility that changes in the evidentiary record could alter those findings with respect to entitlement. *Young*, BRB No. 08-0643 BLA, slip op. at 9. Further, in the interest of judicial economy, the Board affirmed the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3), but did establish total respiratory disability at 20 C.F.R. §718.204(b)(2). *Young*, BRB No. 08-0643 BLA, slip op. at 2 n.1, 10. On remand, the administrative law judge found that claimant established entitlement to benefits.

[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).

pneumoconiosis, the Board held that the administrative law judge's finding that Dr. Cohen's opinion was the most well-reasoned and well-documented opinion of record could not be affirmed. *Young*, BRB No. 10-0697 BLA, slip op. at 10. The Board therefore directed the administrative law judge to reconsider whether the medical opinions establish the existence of legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4), taking into consideration the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *Young*, BRB No. 10-0697 BLA, slip op. at 10-11. The Board further directed the administrative law judge to determine, if necessary, whether pneumoconiosis is a substantially contributing cause of claimant's total disability, pursuant to 20 C.F.R. §718.204(c). *Young*, BRB No. 10-0697 BLA, slip op. at 11-12.

On remand, the administrative law judge reconsidered the medical opinions regarding the existence of legal pneumoconiosis, and the cause of claimant's disabling respiratory impairment, pursuant to the Board's directions on remand. The administrative law judge found that claimant, who is a lifelong non-smoker with twenty-eight and one-half years of coal mine employment, established the existence of legal pneumoconiosis, pursuant to 20 C.F.R. §§718.202(a)(4),[4] and further found that the medical opinion evidence established that claimant is totally disabled due to pneumoconiosis, pursuant to 20 C.F.R. §718.204(c). Decision and Order on Second Remand at 12-13. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in his evaluation of the medical opinions in finding that claimant suffers from legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). Additionally, employer argues that the administrative law judge erred in finding that claimant is totally disabled due to pneumoconiosis at 20 C.F.R. §718.204(c). Claimant responds, urging affirmance of the administrative law judge's Decision and Order on Second Remand. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal. In a reply brief, employer reiterates its contentions on appeal.

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,

[4] The administrative law judge's finding that the medical opinion evidence establishes the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) subsumed the inquiry as to the etiology of the disease at 20 C.F.R. §718.203. *Kiser v. L & J Equipment Co.*, 23 BLR 1-146, 1-159 n.18 (2006).

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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Employer contends that the administrative law judge erred in discounting the opinion of Dr. Renn, and in crediting the opinion of Dr. Cohen, in finding that claimant suffered from legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). On remand, the administrative law judge incorporated, by reference, his previous summary of the facts and law, and noted that Dr. Renn opined that claimant does not have legal pneumoconiosis, but suffers from allergic asthma and chronic hypoxemia, unrelated to coal mine dust exposure.[6] Drs. Cohen, Houser, and Tippy opined that claimant has legal pneumoconiosis.[7]

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[5] The record indicates that claimant's coal mine employment was in Illinois. Director's Exhibit 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[6] The administrative law judge previously considered, and discounted, the opinion of Dr. Repsher, that claimant does not have legal pneumoconiosis, and that his asthma is not related to coal mine dust exposure, finding it internally inconsistent and contrary to the comments to the regulations on the definition of legal pneumoconiosis. The Board affirmed the administrative law judge's rejection of Dr. Repsher's opinion. *Young*, BRB No. 08-0643 BLA, slip op. at 13 n.9.

[7] Dr. Cohen opined that claimant has disabling moderate obstructive lung disease, diffusion impairment, and hypoxemia, significantly contributed to by coal mine dust exposure, and does not suffer from asthma. Claimant's Exhibit 7. Dr. Houser diagnosed coal workers' pneumoconiosis and moderately severe chronic obstructive pulmonary disease (COPD), related to coal mine dust exposure. Claimant's Exhibit 6. Dr. Tippy diagnosed "asthma and reactive airway disease, both of which were probably a result of exposure to rock and coal dust." Director's Exhibit 6. Dr. Tippy opined that claimant's chronic lung disease was related to coal mine dust exposure. *Id*. The administrative law judge also considered Dr. Sanjabi's opinion, that claimant suffers from coal workers'

Finding that Drs. Renn and Cohen are "both qualified to render an expert opinion,"[8] the administrative law judge discounted the opinion of Dr. Renn, as not well-reasoned, and inconsistent with the scientific views endorsed by the Department of Labor (DOL) in the preamble to the 2000 regulatory revisions. In contrast, the administrative law judge credited Dr. Cohen's opinion as well-reasoned, consistent with scientific views contained in the preamble, and supported by the opinions of Drs. Houser and Tippy. Decision and Order on Second Remand at 12. Relying on the opinion of Dr. Cohen, as supported by the opinions of Drs. Houser and Tippy, the administrative law judge concluded that the medical opinion evidence established the existence of legal pneumoconiosis, at 20 C.F.R. §718.202(a)(4). Decision and Order on Second Remand at 12.

As an initial matter, we reject employer's contention that the administrative law judge erred in relying on the preamble to the amended regulations in weighing the medical opinions relevant to the issue of legal pneumoconiosis. Employer's Brief at 15. As set forth in our prior decision, it was within the administrative law judge's discretion to consult the preamble, as an authoritative statement of medical principles accepted by DOL when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment, in assessing the credibility of the medical experts' opinions in this case. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-225-26 (2009), *aff'd sub nom. Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004), *citing Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001); 65 Fed. Reg. 79,939-79,942 (Dec. 20, 2000).

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pneumoconiosis, due to coal mine dust exposure, and asthmatic bronchitis, etiology unknown. Director's Exhibit 6.

[8] The Board previously vacated the administrative law judge's finding that Dr. Cohen's qualifications are superior to those of Dr. Renn, to the extent that his finding was based on the fact that Dr. Cohen continued to treat patients clinically, while Dr. Renn retired from active practice. *Young*, BRB No. 10-0697 BLA, slip op. at 11 n.15. On remand, the administrative law judge fully reconsidered the qualifications of Drs. Cohen and Renn, as instructed, and permissibly concluded that both physicians "are qualified to render an expert opinion in this claim." Decision and Order on Second Remand at 12.

We further reject employer's contention that the administrative law judge mischaracterized Dr. Renn's opinion in finding that it is inconsistent with the views expressed by DOL in the preamble to the regulations. Specifically, employer asserts that the administrative law judge "dismissed Dr. Renn's medical opinion based on assertions that Dr. Renn never made," and based on an analysis of a "June 19, 2006 deposition by Dr. Renn that does not exist." Employer's Brief at 12. Contrary to employer's arguments, Dr. Renn's June 19, 2006 deposition is contained in the record and is identified as Employer's Exhibit 9,[9] and the administrative law judge accurately characterized Dr. Renn's opinion, as set forth in that deposition, in all respects. Employer's Brief at 12; Employer's Exhibit 9 at 28-29, 44-45, 57, 77. Moreover, the Board previously affirmed the administrative law judge's determination to discount Dr. Renn's opinion that coal mine dust did not contribute to claimant's asthma, as expressed in his June 19, 2006 deposition, because it is based on three separate premises that are inconsistent with the views accepted by DOL in the preamble to the revised regulations.[10]

[9] We note that the record before the Board also contains an earlier deposition from Dr. Renn, also marked Employer's Exhibit 9, but dated January 20, 2005. However, the record contains no indication, or argument, that employer intended to rely on this earlier deposition as its Employer's Exhibit 9. Rather, the record reflects employer's intention to rely on Dr. Renn's June 19, 2006 deposition. At the hearing held on May 2, 2006, after the date of the earlier deposition, employer's counsel stated that Dr. Renn's deposition had not yet been scheduled, but would eventually be identified as Employer's Exhibit 9. Similarly, employer's exhibit list, received by the Office of Administrative Law Judges on May 16, 2006, identifies Employer's Exhibit 9 as "[t]he deposition of Dr. Joseph J. Renn to be taken at an agreeable time in the future." Subsequently, by letter dated May 5, 2006, employer's counsel confirmed that Dr. Renn's deposition had been scheduled for June 19, 2006. By letter dated July 5, 2006, employer's counsel identified and submitted Dr. Renn's June 19, 2006 deposition as Employer's Exhibit 9. Moreover, employer's counsel's briefs dated February 20, 2007, January 21, 2009, and June 11, 2010, together with both of the prior decisions by the administrative law judge, and both of the Board's prior decisions, all specifically reference Dr. Renn's June 19, 2006 deposition.

[10] Specifically, during his June 19, 2006 deposition, Dr. Renn gave an opinion on what he would expect to be different if claimant had developed a lung disease related to coal mine dust exposure. Employer's Exhibit 9 at 44. Dr. Renn stated, "I would expect to see, in the absence of restriction, that the obstructive part of the lung volume study would be an elevation of the residual volume but not above 120 percent of predicted; whereas, his was up to 161 percent of predicted and previously had been up to 135 percent of predicted." *Id*. Dr. Renn also stated, "[o]f course, radiographically, I'd expect a preponderance of radiographic evidence to show opacities in the zones that are consistent with coal workers' pneumoconiosis." *Id*.

Young, BRB No. 10-0697 BLA, slip op. at 7-9. As employer has not demonstrated any reason for us to revisit our prior holdings, we decline to do so. *See Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993); *Gillen v. Peabody Coal Co.*, 16 BLR 1-22 (1991); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

Employer next contends that the administrative law judge, on remand, erred in discounting Dr. Renn's opinion as based on a 2005 medical article that is not contained in the record. Employer asserts that the administrative law judge abused his discretion in consulting the article, which, while cited by Dr. Renn, was not submitted into evidence by the parties. Decision and Order on Second Remand at 7; Employer's Brief at 10. Employer contends that the administrative law judge then compounded his error by substituting his opinion for that of a physician when he concluded that the 2005 article did not support Dr. Renn's opinion. Decision and Order on Second Remand at 7;

The Board affirmed the administrative law judge's determination that Dr. Renn's opinion was at odds with the recognition by the Department of Labor (DOL) that coal mine dust exposure can produce a disabling chronic obstructive lung disease even in the absence of restrictive lung disease or x-ray evidence of clinical pneumoconiosis. *Young*, BRB No. 10-0697 BLA, slip op. at 7-8; *see* 20 C.F.R. §718.201(a)(2); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Mountain Clay, Inc. v. Collins*, 256 F. App'x 757 (6th Cir. 2007); 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000)(indicating that "[m]ost evidence to date indicates that exposure to coal mine dust can cause chronic airflow limitation in life and emphysema at autopsy, and this may occur independently of [clinical pneumoconiosis.]"); Decision and Order on Remand at 19.

The Board further affirmed the administrative law judge's finding that, to the extent that Dr. Renn relied on the lapse of time from claimant's last exposure to coal mine dust in 1994, and the November 2003 study revealing asthma, to conclude that claimant's lung disease is not coal mine dust related, his opinion is premised on views contrary to the language of the regulations at 20 C.F.R. §718.201(c), setting forth that pneumoconiosis is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure. *Young*, BRB No. 10-0697 BLA, slip op. at 8-9; *see* 20 C.F.R. §718.201(c); *Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Roberts & Schaefer Co. v. Director, OWCP* [*Williams*], 400 F.3d 992, 999, 23 BLR 2-301, 2-318 (7th Cir. 2005); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 492, 23 BLR 2-18, 2-29 (7th Cir. 2004); 2010 Decision and Order on Remand at 20; Employer's Exhibit 9 at 82.

Employer's Brief at 19. Contrary to employer's contention, any error by the administrative law judge in reviewing, or interpreting, the 2005 article referenced by Dr. Renn is harmless, as the administrative law judge has provided several valid reasons, previously affirmed by the Board, for discrediting Dr. Renn's opinion.[11] *See Amax Coal Co v. Director, OWCP* [*Chavis*], 772 F.2d 304, 8 BLR 2-46 (7th Cir. 1985); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983). Because the administrative law judge's credibility determinations were both previously affirmed and within his discretion, we affirm the administrative law judge's finding that Dr. Renn's opinion is not well-reasoned, and is entitled to diminished probative value regarding the existence of legal pneumoconiosis, pursuant to 20 C.F.R. § 718.202(a)(4).[12] *See Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Employer next contends that the administrative law judge erred in finding Dr. Cohen's opinion sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer contends that the administrative law judge erroneously disregarded the fact that Dr. Cohen's opinion is based on outdated studies that were conducted before 2001, and thus predate the scientific studies recognized in the preamble to the revised regulations. Employer's Brief at 16. Employer further contends that Dr. Cohen's opinion is based on evidence that is not contained in the record. Employer also asserts that, as with Dr. Renn, the administrative law judge erred in looking outside the record at a study cited by Dr. Cohen, and again compounded his error by determining that the study supported Dr. Cohen's opinion. Employer's Brief at 19. Employer's allegations of error are without merit.

In analyzing Dr. Cohen's opinion, that claimant suffers from legal pneumoconiosis, the administrative law judge complied with the Board's remand instructions to consider whether Dr. Cohen's review of certain information that was outside the record rendered Dr. Cohen's conclusions less probative. The administrative law judge acknowledged that Dr. Cohen had reviewed Dr. Tuteur's inadmissible report

[11] In addition to affirming the administrative law judge's finding that three premises of Dr. Renn's opinion are inconsistent with the medical science accepted by DOL, the Board also affirmed the administrative law judge's finding that Dr. Renn's diagnosis of "allergic asthma" was not supported by the treatment records. *Young*, BRB No. 10-0697 BLA, slip op. at 6.

[12] As we have affirmed the administrative law judge's finding that Dr. Renn's opinion is not well-reasoned, we need not address employer's contentions regarding the administrative law judge's consideration of Dr. Renn's qualifications. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

and testing, but permissibly concluded that it did not impact Dr. Cohen's opinion, as Dr. Cohen had relied on other factors, including the admissible medical opinions, supporting medical data, and accurate smoking and coal mine employment histories contained in the reports of Drs. Sanjabi, Tippy, Houser, Renn and Repsher. *See Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (en banc); *Brasher v. Pleasant View Mining Co.*, 23 BLR 1-141 (2006); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006) (en banc) (McGranery & Hall, JJ., concurring and dissenting); Decision and Order on Second Remand at 4-5.

The administrative law judge also acted within his discretion in determining that Dr. Cohen's citation to certain medical literature that is not contained in the record, including medical studies conducted prior to studies accepted by DOL, did not impact the probative value of Dr. Cohen's opinion. Decision and Order on Second Remand at 7-10. The administrative law judge explained that, notwithstanding Dr. Cohen's citation to these studies, the stated premises of Dr. Cohen's disease causation opinion remain consistent with the plain language of the regulations and the scientific principles set forth in the preamble to the revised regulations. Decision and Order on Second Remand at 9. Thus, in crediting Dr. Cohen's opinion, the administrative law judge concluded:

> The significant, admitted evidence considered by Dr. Cohen sufficiently documents his opinion that the miner suffers from legal coal workers' pneumoconiosis. Further, this tribunal remains persuaded by Dr. Cohen's rationale, which is premised on views that are not in conflict with the plain language of the regulations and the preamble. Dr. Cohen specifically addressed Mr. Young's medical data, and he did not offer an opinion based on generalities.

Decision and Order on Second Remand at 10.

Because the administrative law judge specifically found that Dr. Cohen set forth the rationale for his findings, based on his interpretation of the admissible medical evidence of record, and explained why he concluded that claimant's disabling respiratory impairment is due to coal mine dust exposure, we affirm the administrative law judge's permissible conclusion that Dr. Cohen's opinion is "reasoned and documented, is supported by the reports and data of Drs. Houser and Tippy, and sustains Claimant's burden of demonstrating the presence of legal coal workers' pneumoconiosis." Decision and Order on Second Remand at 10; *see Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893-94, 13 BLR 2-348, 2-355-56 (7th Cir. 1990); *Amax Coal Co. v. Burns*, 855 F.2d 499, 510 (7th Cir. 1988); *Clark*, 12 BLR at 1-155.

Employer next argues that the administrative law judge erred in finding that the evidence established that claimant's total disability is due to pneumoconiosis pursuant to

20 C.F.R. §718.204(c). Employer's contention lacks merit. The administrative law judge rationally discounted the opinion of Dr. Renn because he did not diagnose legal pneumoconiosis, contrary to the administrative law judge's own findings. *See Stalcup v. Peabody Coal Co*., 477 F.3d 482, 484, 24 BLR 2-33, 2-37 (7th Cir. 2007); *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318; *see also Poole*, 897 F.2d at 895, 13 BLR at 2-355; Decision and Order on Second Remand at 12-13. Moreover, as the administrative law judge rationally relied on the well-reasoned and well-documented opinion of Dr. Cohen to find that claimant established the existence of legal pneumoconiosis, he permissibly found that Dr. Cohen's opinion supported a finding that claimant is totally disabled due to legal pneumoconiosis. Decision and Order on Second Remand at 13. Consequently, we affirm the administrative law judge's finding that claimant established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). We, therefore, affirm the administrative law judge's award of benefits.

Accordingly, the administrative law judge's Decision and Order on Second Remand awarding benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge