U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 19-0091 BLA

DOUGLAS A. HARTSOCK	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
APACHE COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 02/28/2020
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
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 Awarding Benefits of Morris D. Davis, Administrative Law Judge, United States Department of Labor.

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

Rita A. Roppolo (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: ROLFE, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer/Carrier (employer) appeals the Decision and Order Awarding Benefits (2016-BLA-05710) of Administrative Law Judge Morris D. Davis rendered on a subsequent claim filed on April 24, 2014,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with 3.086 years of coal mine employment.[2] He determined claimant established total disability due to legal pneumoconiosis[3] and a change in an applicable condition of entitlement. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c), 718.309. Thus, the administrative law judge awarded benefits.

On appeal, employer argues the administrative law judge lacked the authority to hear and decide the case because he had not been appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[4] It also challenges his

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[1] The district director denied claimant's prior claim on January 31, 2012, for failure to establish any element of entitlement. Director's Exhibit 1.

[2] Under Section 411(c)(4) of the Act, there is a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he or she establishes at least fifteen years of underground coal mine employment, or substantially similar surface coal mine employment, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305. Because claimant established fewer than fifteen years of coal mine employment, he could not invoke the presumption.

[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). "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).

[4] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment

authority in light of the removal provisions governing administrative law judges. Employer also contends that the administrative law judge erred in finding claimant established legal pneumoconiosis and disability causation. Claimant has not responded to employer's appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting employer did not timely raise its Appointments Clause challenge or adequately brief the issue of the removal provisions. Employer filed a reply brief, reiterating its contentions regarding the administrative law judge's appointment.[5]

The Board's scope of review is defined by statute. We must affirm the Decision and Order Awarding Benefits if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 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, 361-62 (1965).

Appointments Clause Challenge

Employer urges the Board to vacate the administrative law judge's Decision and Order Awarding Benefits and remand the case to be heard by a different, constitutionally appointed administrative law judge pursuant to *Lucia v. Sec. & Exch. Comm'n*, 585 U.S. , 138 S.Ct. 2044 (2018).[7] Employer contends that the Secretary of Labor's ratification of

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> of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[5] We affirm, as unchallenged, the administrative law judge's findings that claimant established 3.086 years of coal mine employment, total disability, and a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2); 718.309; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-6.

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant's last coal mine employment occurred in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3; Director's Exhibits 1, 6; Hearing Transcript at 18.

[7] *Lucia* involved an Appointments Clause challenge to the appointment of an administrative law judge at the Securities and Exchange Commission (SEC). In *Lucia*, the United States Supreme Court held that, similar to the Special Trial Judges at the Tax Court, SEC administrative law judges are "inferior officers" subject to the Appointments Clause.

the administrative law judge's appointment on December 21, 2017, does not satisfy the Appointments Clause.[8] Employer's Brief In Support of Petition for Review at 9-12. In response, the Director asserts employer forfeited its Appointments Clause challenge by failing to timely raise the issue before the administrative law judge and that exceptional circumstances do not exist to excuse its failure to timely raise it. Director's Response Brief at 2-7. Employer replies that "it is not clear that a party can waive a challenge to the constitutionality of [Department of Labor administrative law judges], given that [they] have no authority to determine their own constitutionality and the Board's authority is limited to the [administrative law judge's] decision." Employer's Reply Brief at 4. Employer maintains it is sufficient that an Appointments Clause challenge is raised before the Board. *Id*. Employer's arguments are without merit.

Appointments Clause issues are "non-jurisdictional" and thus subject to the doctrines of waiver and forfeiture.[9] *See Lucia*, 138 S. Ct. at 2055 (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) ("Appointments Clause challenges are not jurisdictional and thus are subject to ordinary principles of waiver and forfeiture.") (citation omitted). *Lucia* was decided on June 21, 2018, giving employer more than four months to raise the issue to the administrative law judge prior to his October 31, 2018 Decision and Order Awarding Benefits. Had employer timely raised its Appointments Clause challenge to the administrative law judge, he could have considered the issue and, if appropriate, provided the relief employer is requesting, i.e., he could have referred the case for assignment to a different, properly appointed administrative law judge to hold a new hearing and issue a decision based on the record developed at that hearing. *Powell v. Service Employees Intnl, Inc.*, __ BRBS __, BRB No. 18-0557, slip op. at 4 (Aug. 8, 2019); *Kiyuna v. Matson Terminal Inc.*, __ BRBS __, BRB No. 19-0103, slip op. at 4-5 (June 25, 2019). Based on these facts, we conclude that

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Lucia v. Sec. & Exch. Comm'n, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (citing *Freytag v. Commissioner*, 501 U.S. 868 (1991)).

[8] On July 20, 2018, the Department of Labor (DOL) expressly conceded that the Supreme Court's holding in *Lucia* applies to the DOL's administrative law judges. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

[9] Because the issue can be waived or forfeited, we reject employer's contention that its Appointments Clause argument must be addressed regardless of whether it was timely raised below. *See Powell v. Service Employees Intnl, Inc.*, __ BRBS __, BRB No. 18-0557, slip op. at 4 (Aug. 8, 2019); Employer's Reply Brief at 4.

employer forfeited its Appointments Clause challenge by not timely raising it before the administrative law judge.[10] *See Powell*, BRB No. 18-0557 BLA, slip op. at 4*; Kiyuna*, BRB No. 19-0103 BLA, slip op. at 4.

Furthermore, employer has not identified any basis for excusing its forfeiture. *See Glidden Co. v. Zdanok*, 370 U.S. 530, 535 (1962) (cautioning against excusing forfeited arguments because of the risk of sandbagging). We reject employer's argument that *Freytag v. Commissioner*, 501 U.S. 868 (1991) mandates consideration of its Appointments Clause argument. Employer's Reply Brief at 2. In *Freytag*, the Supreme Court excused waiver of the Appointments Clause issue as it pertained to Special Trial Judges (STJs) appointed by the United States Tax Court. The Court stated "this is one of those rare cases in which we should exercise our discretion to hear petitioners' challenge," because to do otherwise would leave unresolved "important questions . . . about the Constitution's structural separation of powers." 501 U.S. at 873, 879. The same rationale for excusing waiver or forfeiture is not present in this case because, as the Supreme Court determined in *Lucia*, the analysis in *Freytag* for determining that STJs are inferior officers subject to the Appointments Clause applies *a fortiori* to administrative law judges. *Lucia*, 138 S.Ct. at 2053-2054. As the Court observed, existing case law provided "everything necessary to decide this case." 138 S.Ct. at 2053. Thus, we hold that employer forfeited its Appointments Clause challenge and deny the relief requested.

Removal Provisions

Employer also argues the administrative law judge lacked authority to adjudicate this case because "the provisions that governed removal of the [administrative law judge] at that time and that are in effect with respect to this [administrative law judge] today were and are still constitutionally infirm" because they violate the separation-of-powers doctrine. Employer's Brief in Support of Petition for Review at 9. Employer asserts that Executive Order 13843, issued on July 10, 2018, makes clear that the administrative law judge remains in the competitive service. *Id*. at 10-11; Employer's Reply Brief at 9. We consider employer's arguments to be adjunct to the Appointments Clause challenge, which was forfeited. Furthermore, we conclude employer has failed to adequately brief this issue. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); 20 C.F.R. §802.211(b).

[10] Employer also forfeited its right to challenge whether the Secretary of Labor's ratification of the administrative law judge's appointment on December 21, 2017 was valid, since it had the opportunity to also raise this issue before the administrative law judge subsequent to *Lucia* but it failed to do so.

The Board's procedural rules impose certain threshold requirements for alleging specific error before the Board will consider the merits of an issue on appeal. In relevant part, a petition for review "shall be accompanied by a supporting brief, memorandum of law or other statement which . . . [s]pecifically states the issues to be considered by the Board." 20 C.F.R. §802.211(b). The petition for review must also contain "an argument with respect to each issue presented" and "a short conclusion stating the precise result the petitioner seeks on each issue and any authorities upon which the petition relies to support such proposed result." *Id*. Further, to "acknowledge an argument" in a petition for review "is not to make an argument" and "a party forfeits any allegations that lack developed argument." *Jones Bros. v. Sec'y of Labor*, 898 F.3d 669, 677 (6th Cir. 2018), *citing United States v. Huntington Nat'l Bank*, 574 F.3d 329, 332 (6th Cir. 2009). A reviewing court should not "consider far-reaching constitutional contentions presented in [an off-hand] manner." *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1392 (7th Cir. 1986) (refusing to consider the merits of argument that the FTC is unconstitutional because its members exercise executive powers yet can be removed by the President only for cause).

Employer states that the administrative law judge's appointment was improper in view of the removal provisions contained in the Administrative Procedure Act (APA), 5 U.S.C. §7521. Employer's Brief in Support of Petition for Review at 10-11. Employer has not specified how those provisions violate the separation of powers doctrine or explained how such a holding undermines the administrative law judge's authority to hear and decide this case.[11] *Id.*; Employer's Reply Brief at 8-9. Thus, we decline to address this issue. *Cox*, 791 F.2d at 446-47; 20 C.F.R. §802.211(b).

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[11] Employer cites the Supreme Court's decisions in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010) and *Lucia*. Employer's Brief in Support of Petition for Review at 10-11. It notes that in *Free Enterprise*, the Supreme Court invalidated a statutory scheme that provided the Public Company Accounting Oversight Board two levels of "for cause" removal protection and thus resulted in a "constitutionally impermissible diffusion of accountability." *Id*. at 11. Employer does not set forth how *Free Enterprise* applies to the administrative law judge. As the Director notes, the Supreme Court in *Free Enterprise* stated that its holding "does not address that subset of independent agency employees who serve as administrative law judges." *Free Enter. Fund*, 561 U.S. at 507 n.10; *see* Director's Brief at 6. Further, the majority opinion in *Lucia* declined to address the removal provisions for administrative law judges. *Lucia*, 138 S.Ct. at 2050 n.1.

To be entitled to benefits under the Act, claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 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).

Legal Pneumoconiosis

To establish legal pneumoconiosis, claimant must prove he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b). The administrative law judge credited Dr. Ajjarapu's opinion that claimant has legal pneumoconiosis over the contrary opinions of Drs. Rosenberg and Fino. Decision and Order at 22.

Initially, we reject employer's contention the administrative law judge erred in discrediting its experts. Drs. Rosenberg and Fino opined that claimant has an obstructive respiratory impairment (emphysema) due solely to smoking with no contribution from coal mine dust exposure. Director's Exhibit 30; Employer's Exhibits 3, 5, 6. The administrative law judge correctly noted Dr. Rosenberg opined claimant does not have legal pneumoconiosis based on his view that the additive effects of smoking and coal mine dust exposure are not equal in causing obstructive respiratory impairment. Employer's Exhibit 5. He cited medical studies showing the average loss in FEV1 from cigarette smoking is greater than the average loss in FEV1 from coal mine dust exposure. *Id*. The administrative law judge permissibly concluded that even if smoking causes greater decrements in lung function as Dr. Rosenberg asserts, he did not adequately explain "whether in [c]laimant's particular case his respiratory impairment was caused at least in part by his exposure to coal mine dust as well as smoking." Decision and Order at 21; *see* 65 Fed. Reg. 79,920, 79,941 (Dec. 20, 2000) (statistical averaging conceals the fact that miners can suffer from severe respiratory disease even if the average loss of FEV1 per year is clinically insignificant); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (Traxler, C.J., dissenting); *see also Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985) (an administrative law judge may reject medical opinions that rely on generalities).

Dr. Rosenberg also noted CT scans were interpreted as showing centrilobular emphysema, which he described as a "diffuse emphysematous process." Employer's Exhibit 3 at 6, 8; *see* Claimant's Exhibits 6, 7. He stated that "[e]mphysema of this sort

does not represent the presence of legal [pneumoconiosis]." Employer's Exhibit 3 at 8. The administrative law judge permissibly found Dr. Rosenberg's opinion unpersuasive based on science the DOL credited in the preamble indicating that centrilobular emphysema is "significantly more common" among miners than non-miners. Decision and Order at 21, *citing* 65 Fed. Reg. at 79,941; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998). We affirm the administrative law judge's credibility findings with respect to Dr. Rosenberg's opinion as they are supported by substantial evidence. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997) (administrative law judge has the discretion to assess the credibility of the medical opinions and the Board may not reweigh the evidence or substitute its own inferences on appeal).

We also see no error with the administrative law judge's discrediting of Dr. Fino's opinion on legal pneumoconiosis. According to Dr. Fino, "literature clearly states the amount of obstruction and lung disease "related to coal dust induced emphysema [is] directly proportional to the amount of coal dust retention in the lungs." Employer's Exhibit 6 at 9. Dr. Fino indicated there was "no evidence of dust retention" in claimant's lungs and he attributed all of claimant's obstructive respiratory impairment from emphysema to smoking. *Id*. The administrative law judge permissibly found Dr. Fino's reasoning inconsistent with the DOL's position that legal pneumoconiosis can exist in the absence of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4), (b); 65 Fed. Reg. 79,920, 79,940-43 (Dec. 21, 2000); *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488-89 (6th Cir. 2012) (opinion that emphysema could not have been caused by coal mine dust exposure because insufficient dust retention was shown on the miner's x-rays permissibly discounted as counter to the studies underlying the preamble); Decision and Order at 21-22. We therefore affirm the administrative law judge's decision to assign Dr. Fino's opinion little weight. *Hicks*, 138 F.3d at 528.

We agree with employer, however, that the administrative law judge did not adequately explain his findings with respect to Dr. Ajjaraupu's opinion. The administrative law judge found Dr. Ajjarapu's diagnosis of legal pneumoconiosis reasoned and "supported by the objective medical evidence." Decision and Order at 21. Dr. Ajjarapu diagnosed clinical pneumoconiosis by x-ray and "legal pneumoconiosis/chronic bronchitis" based on claimant's respiratory symptoms, including cough, wheezing and shortness of breath. Director's Exhibit 10, 16. But contrary to the administrative law judge's finding, Dr. Ajjarapu did not identify any objective testing to support her diagnosis of chronic bronchitis. *Id*.

The administrative law judge also stated "[t]here is no dispute between Dr. Rosenberg, Dr. Fino, and Dr. Ajjarapu that [c]laimant's respiratory impairment is due to obstruction/emphysema, and I have found that [c]laimant's obstruction/emphysema is totally disabling, and that it constitutes legal pneumoconiosis." Decision and Order at 25.

Unlike employer's experts, however, Dr. Ajjarapu did not diagnosis emphysema or an obstructive respiratory impairment based on the pulmonary function studies. Director's Exhibits 10, 16. The administrative law judge's finding of legal pneumoconiosis does not account for Dr. Ajjarapu's specific diagnoses in this case.[12] *See McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (Board lacks the authority to render factual findings to fill in gaps in the administrative law judge's opinion).

In addition, the administrative law judge did not discuss whether Dr. Ajjarapu had an accurate understanding of claimant's coal mine employment history. Dr. Ajjarapu relied on a history of 8.2 years, contrary to the administrative law judge's finding of 3.086 years of coal mine employment. Where a discrepancy exists between the administrative law judge's findings and a physician's assumption regarding the length of a miner's coal mine work history, he must explain how it affects the credibility of the physician's opinion. *See Creech v. Benefits Review Board*, 841 F.2d 706, 709 (6th Cir. 1988); *Sellards v. Director, OWCP*, 17 BLR 1-77, 1-81 (1993).

Because the administrative law judge mischaracterized Dr. Ajjarapu's opinion and did not adequately explain his findings in accordance with the APA,[13] we vacate his determination that claimant has legal pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order at 22. As we vacate the administrative law judge's finding legal pneumoconiosis was established,

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[12] The administrative law judge credited Dr. Ajjarapu's explanation that "respirable coal dust, once inhaled, cannot be removed by the nature clearing mechanisms of the body, and once deposited into the tissue, it triggers a cascade of inflammatory response, causing coal macules and nodules that are visible as small opacities on x-ray." Decision and Order at 20-21. Because the administrative law judge determined the x-ray evidence was inconclusive for establishing the existence of clinical pneumoconiosis, he erred in not addressing the extent to which Dr. Ajjarapu's findings of clinical pneumoconiosis influenced her opinion that claimant has legal pneumoconiosis.

[13] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

we also vacate his determination that claimant established total disability due to legal pneumoconiosis.[14] 20 C.F.R. §718.204(c); Decision and Order 25.

Clinical Pneumoconiosis

The Director asks the Board to review the administrative law judge's findings on clinical pneumoconiosis in the event the case is remanded for further consideration. Director's Brief at 11 n.9. The administrative law judge found claimant did not establish clinical pneumoconiosis. The administrative law judge specifically found there are "two positive, one negative, and two equivocal ILO x-rays."[15] 20 C.F.R. §718.202(a)(1). He concluded the x-ray evidence was "equivocal at best" and thus found that claimant did not satisfy his burden of proof. Decision and Order at 19. We agree with the Director that the administrative law judge did not adequately explain his overall finding since "equivocal x-rays carry no weight" and the preponderance of the other readings are positive. Because we are unable to discern the administrative law judge's rationale, we vacate his determination that claimant did not establish clinical pneumoconiosis by the x-ray evidence. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); 20 C.F.R. §718.202(a)(1); Decision and Order at 20. Moreover, to the extent the administrative law judge's weighing of x-rays influenced his rejection of Dr. Ajjarapu's opinion on clinical pneumoconiosis, we also vacate his determination claimant did not establish clinical pneumoconiosis based on the medical opinions. 20 C.F.R. §718.202(a)(4).

Remand Instructions

The administrative law judge must reconsider whether claimant established both clinical and legal pneumoconiosis. 20 C.F.R. §718.202(a). In addressing legal

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[14] To establish disability causation, claimant must prove that pneumoconiosis was a "substantially contributing cause" of the miner's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1).

[15] We see no error in the administrative law judge's findings with regard to each specific x-ray. Crediting the readings from dually qualified Board-certified radiologists and B readers, he permissibly found the June 11, 2014 and August 27, 2015 x-rays positive for pneumoconiosis, the results of the April 12, 2017 x-ray equivocal, and the May 11, 2107 x-ray negative for pneumoconiosis. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 6-7; 19; Director's Exhibits 10,11, 23, 28, 29, 30; Claimant's Exhibits 1, 2; Employer's Exhibit 1.

pneumoconiosis, the administrative law judge must determine whether Dr. Ajjarapu's opinion is adequately reasoned to satisfy claimant's burden of proof, taking into consideration her credentials, her specific diagnoses, the explanations for her conclusions, her understanding of claimant's smoking and work histories, the documentation underlying her medical judgment, and the sophistication of, and bases for, her opinion. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). If claimant establishes clinical or legal pneumoconiosis, the administrative law judge must determine whether either disease was a substantially contributing cause of his total respiratory disability. 20 C.F.R. §718.204(c). In reaching his determinations on remand, the administrative law judge must explain the bases for his findings of fact and conclusions of law in accordance with the APA. *See Wojtowicz*, 12 BLR at1-165.

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 consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge