BRB No. 00-0215 BLA

WILLIAM C. GRIFFITH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
STERLING SMOKELESS COAL CORPORATION	)	DATE ISSUED:
	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle & Rundle), Pineville, West Virginia, for claimant.

Laura Metcoff Klaus (Arter & Hadden), Washington, D.C., for employer.

Barry H. Joyner (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order (99-BLA-0219) of Administrative Law Judge Edward Terhune Miller 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). The administrative law judge found at least eighteen years of coal

mine employment established and found that, as employer was the most recent operator capable of assuming liability, employer was the properly designated responsible operator pursuant to 20 C.F.R. §§725.492 and 725.493. Next, the administrative law judge found that the instant claim, Director's Exhibit 1, was a duplicate claim pursuant to 20 C.F.R. §725.309(d), filed more than one year after the denial of claimant's prior claim, Director's Exhibit 24. Thus, the administrative law judge considered whether the new evidence submitted since the denial of claimant's prior claim established a material change in conditions pursuant to Section 725.309(d) in accordance with the standard enunciated by the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, in *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied*, 519 U.S. 1090 (1997). The administrative law judge found that while the existence of pneumoconiosis was not established by the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1), it was established by the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4) and, therefore, found a material change in conditions established pursuant to Section 725.309(d) in accordance with the standard enunciated in *Rutter*, *supra*. The administrative law judge further found that claimant was entitled to the presumption of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §718.203(b) and found total disability due to pneumoconiosis established pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding that employer was the properly designated responsible operator and contends that liability should be assumed by the Black Lung Disability Trust Fund (the Trust Fund) in this case. On the merits, employer also contends that the administrative law judge erred in finding a material change in conditions established pursuant to Section 725.309(d) or, alternatively, in finding the medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Finally, employer contends that the administrative law judge erred in finding total disability due to pneumoconiosis established pursuant to Section 718.204(b), (c). Both claimant and the Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, respond, urging that findings challenged by employer be affirmed.

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

[1] Claimant originally filed a claim with the Social Security Administration on June 26, 1973, which was ultimately denied on review by the Department of Labor on December 10, 1979, inasmuch as claimant failed to establish any element of entitlement, Director's Exhibit 24. Claimant took no further action on this claim. Claimant filed the instant, duplicate claim, at issue herein, on July 1, 1994, Director's Exhibit 1.

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, the administrative law judge found that employer was the most recent operator capable of assuming liability pursuant to Sections 725.492 and 725.493, Decision and Order at 3-4. Section 725.492 establishes certain criteria an employer must meet in order to be considered a responsible operator. *See* 20 C.F.R. §725.492. If the employer does not meet that criteria, then the responsible operator shall be considered the next employer with whom the claimant had the latest periods of employment of not less than one year pursuant to 20 C.F.R. §725.493(a)(4), *see Director, OWCP v. Trace Fork Coal Co. [Matney]*, 67 F.3d 503, 19 BLR 2-290 (4th Cir. 1995); *Eastern Associated Coal Corp. v. Director, OWCP* [*Patrick*], 791 F.2d 1129 (4th Cir. 1986); *see also Cole v. East Kentucky Collieries*, 20 BLR 1-50 (1996). Pursuant to Section 725.492(a)(4), one of the criteria an employer must meet in order to be considered a responsible operator is that the operator and/or the employer shall be capable of assuming its liability for the payment of benefits, *see* 20 C.F.R. §725.493(a)(4).

Originally, Barrett Fuel Corporation (Barrett Fuel) was named as the responsible operator in this claim, as the employer with whom claimant had the latest periods of coal mine employment of not less than one year, *see* 20 C.F.R. §725.493; Director's Exhibits 4, 18, 20. The case was referred to the Office of Administrative Law Judges for a hearing, but a continuance of the scheduled hearing was granted on November 27, 1995, Director's Exhibits 29, 31. Subsequently, on March 11, 1996, Barrett Fuel informed the Office of Administrative Law Judges that it had filed for Chapter 7 bankruptcy and would be unable to assume liability in this claim, Director's Exhibits 34, 36. In light of evidence confirming that Barrett Fuel had filed for Chapter 7 bankruptcy, a motion to remand the case by the Director was granted on July 30, 1996, in order that Sterling Smokeless Coal Corporation (hereinafter, employer), as the next employer with whom the claimant had the latest periods of coal mine employment of not less than one year, could be named as the responsible operator capable of assuming liability in this claim, Director's Exhibits 4, 37-40.

On November 14, 1997, employer was notified that it was the most recent responsible operator capable of assuming liability in this claim, Director's Exhibit 42. Employer controverted the claim, *id.*, and, after claimant initially objected, employer had claimant examined by Dr. Zaldivar and submitted Dr. Zaldivar's July 2, 1998, examination report, Director's Exhibits 46-47, 49, 51. The case was then again referred to the Office of Administrative Law Judges for a hearing, Director's Exhibit 52, which was held by the administrative law judge on April 20, 1999.

Subsequently, in conjunction with its closing argument, the Director submitted evidence indicating that Adventure Resources, Incorporated, along with a number of its affiliates and subsidiaries, including Barrett Fuel, had filed for Chapter 7 bankruptcy and that the Chapter 7 trustee had indicated that only secured claims would be paid, *see Adventure Resources, Inc. v. Holland*, 137 F.3d 786, 792 n. 3 and 4 (4th Cir. 1998). The Director also

submitted a copy of a Proof of Claim that the Director had filed on behalf of the Trust Fund in the Adventure Resources bankruptcy case, asserting an $8 million unsecured claim against Adventure Resources and its affiliates and subsidiaries, in anticipation that Adventure Resources' self-insurance would be exhausted prior to satisfying its obligations under the Act, Director's Exhibits 54-55. The Director noted in the Proof of Claim that if Adventure Resources did not satisfy its obligations under the Act, the Trust Fund "will be required to do so," Director's Exhibit 55.

The administrative law judge found that the evidence established that Barrett Fuel filed for Chapter 7 bankruptcy and that, while the Director had filed an unsecured claim against Adventure Resources and its affiliates, including Barrett Fuel, only secured claims would be paid from the bankruptcy estate. Thus, the administrative law judge held that Barrett Fuel was not capable of assuming liability under Section 725.492(a)(4) and, therefore, held that because employer was the next most recent operator capable of assuming liability pursuant to Sections 725.492 and 725.493, it was the properly designated responsible operator.

Employer initially contends that the Department of Labor erred in not determining whether there was a successor to Barrett Fuel capable of assuming liability or whether Barrett Fuel's officers and directors had the ability to assume liability in this claim before naming employer as the most recent operator capable of assuming liability. Contrary to employer's contention, Chapter 7 bankruptcy ultimately will result in the liquidation of Barrett Fuel and it will cease to exist. Moreover, the Director is not required to consider whether the corporate officers of a potential responsible operator are financially incapable of assuming liability and can be held liable as responsible operators pursuant to 20 C.F.R. §725.491(a), in addition to establishing that the potential operator itself is incapable of assuming liability, before designating the next most recent responsible operator, *see Mitchem v. Bailey Energy, Inc.*, 21 BLR 1-162 (1999)(*en banc*)(Hall, C.J., and Nelson, J., concurring and dissenting), *aff'd on recon.*, 22 BLR 1-24 (1999)(*en banc*)(Hall, C.J., and Nelson, J., concurring and dissenting); *Lester v. Mack Coal Co.*, 21 BLR 1-126 (1999)(*on recon.*)(*en banc*).

Employer also contends that the Director's representation to the bankruptcy court in its Proof of Claim that if Adventure Resources and Barrett Fuel did not satisfy their obligations under the Act, the Trust Fund "will be required to do so," Director's Exhibit 55, is enforceable against the Director. The Director responds that the Director's Proof of Claim merely notes the Trust Fund's "potential" liability and cannot constitute a waiver of the Trust Fund's right to name employer as the next most recent operator capable of assuming liability in light of 26 U.S.C. §9501(d)(1)(B), which established the Trust Fund. As the Director contends, the Trust Fund can only assume liability pursuant to 26 U.S.C. §9501(d)(1)(B) where there is no operator who is liable for the payment of benefits and the Fourth Circuit has held that if an employer does not meet the criteria to be considered a responsible operator, such as the financial capability to assume liability, then the responsible operator shall be considered the next employer with whom the claimant had the latest periods of coal

mine employment of not less than one year pursuant to 20 C.F.R. §725.493(a)(4), *see Matney*, *supra*; *Patrick*, *supra*; *see also Cole*, *supra*.

Finally, employer contends that it was prejudiced by the Department of Labor's delay in notifying employer of its potential liability, such that liability should transfer to the Trust Fund. Employer notes that the development of employer's proof was delayed by claimant's initial refusal to be examined by a physician on behalf of employer and, in any event, contends that liability rests with the Trust Fund whether or not "actual" prejudice is shown. The Department of Labor must resolve the responsible operator issue alone in a preliminary proceeding, *see* 20 C.F.R. §725.412(d), and/or proceed against all potential putative responsible operators at every stage of the claims adjudication prior to fully litigating the claim, otherwise liability for payment rests with the Trust Fund, inasmuch as to name another potential operator after fully litigating a claim and/or awarding benefits would offend due process, potentially upset the administrative law judge's finding on the merits and would not enhance efficient administration of the Act and expeditious processing of claims, *see Crabtree v. Bethlehem Steel Corp.*, 9 BLR 1-354, 1-357 (1984); *see also Matney*, *supra*; *England v. Island Creek Coal Co.*, 17 BLR 1-141 (1993). Moreover, the Fourth Circuit has held that delay by the Department of Labor in providing notice of an employer's potential liability on a claim under the Act violates due process if the delay deprives the employer of a fair opportunity to mount a meaningful defense, but does not require a showing of "actual prejudice," *see Consolidation Coal Co. v. Borda*, 171 F.3d 175, 21 BLR 2-545 (4th Cir. 1999); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 21 BLR 2-302 (4th Cir. 1998).

The facts in the instant case, however, are distinguishable from those involved in *Crabtree*, as well as *Borda*, *Lockhart*, *Matney* and *Mitchem*. In this case, employer was notified of its potential liability in this claim prior to any formal hearing on the merits and/or any award of benefits. Thus, inasmuch as the claim had not been fully litigated on the merits, the concerns presented in *Crabtree* regarding piecemeal litigation are not present, *see also Matney*, *supra*; *Mitchem*, *supra*. Moreover, although claimant initially objected, employer had an opportunity to examine claimant and submitted an examination report from Dr. Zaldivar prior to the hearing in this case, Director's Exhibits 46-47, 49, 51-52. Thus, as employer was able to develop evidence to defend against the claim, employer was not

[2] In addition, contrary to employer's contention, the Director's Proof of Claim, asserting an unsecured claim against the bankruptcy estate of Barrett Fuel on behalf of the Trust Fund for any unsatisfied liability obligations under the Act resulting from Barrett Fuel's bankruptcy, Director's Exhibits 54-55, is distinguishable from a bankruptcy settlement agreement reached between the Director and an employer, and approved by a bankruptcy court, which provides that the Department of Labor will be responsible for the payment of any liability obligations under the Act resulting from an employer's bankruptcy, *see generally Collins v. J & L Steel*, 21 BLR 1-181 (1999).

deprived of a fair opportunity to mount a meaningful defense, *see Lewis Consolidation Coal Co.*, 15 BLR 1-37 (1991); *Beckett v. Raven Smokeless Coal Co.*, 14 BLR 1-43 (1990); *see also Borda, supra*; *Lockhart, supra*.

In addition, the administrative law judge's findings that Barrett Fuel has filed for Chapter 7 bankruptcy and that only secured claims will be paid from the bankruptcy estate, *see Holland, supra,* whereas the Director has only an unsecured claim against Barrett Fuel, *see* Director's Exhibits 54-55, is supported by substantial evidence. Consequently, we affirm the administrative law judge's finding that Barrett Fuel is not capable of assuming liability under Section 725.492(a)(4) and, therefore, affirm the administrative law judge's finding that, as the next most recent operator capable of assuming liability pursuant to Sections 725.492 and 725.493, *see Matney*, *supra*; *Patrick*, *supra*; *see also Cole*, *supra*, employer is the properly designated responsible operator, *see* 20 C.F.R. §725.412(a); *Lewis*, *supra*; *Beckett*, *supra*.

On the merits, employer initially contends that the administrative law judge erred in finding a material change in conditions established pursuant to Section 725.309(d) based on the administrative law judge's finding that the existence of "legal" pneumoconiosis, *i.e.*, pneumoconiosis as more broadly defined by the Act and the regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201, was established by the medical opinion evidence pursuant to Section 718.202(a)(4). The Fourth Circuit has held that in order to establish a material change in conditions in a duplicate claim pursuant to Section 725.309(d), a claimant must prove "under all of the probative medical evidence of his condition after the prior denial, at least one of the elements previously adjudicated against him," *see Rutter, supra*. In order to establish entitlement to benefits under Part 718 in this living miner's claim, it must be established that claimant suffered from pneumoconiosis, that the pneumoconiosis arose out of his coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3; 718.202; 718.203; 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Failure to prove any one of these elements precludes entitlement, *id*.

Subsequent to the issuance of the administrative law judge's Decision and Order, the Fourth Circuit held that, based on the statutory language at 30 U.S.C. §923(b), all relevant evidence is to be considered together rather than merely within discrete subsections of 20 C.F.R. §718.202(a)(1)-(4) in determining whether claimant has met his burden of establishing the existence of pneumoconiosis by a preponderance of all of the evidence, *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000). Consequently, we vacate the administrative law judge's findings that the existence of pneumoconiosis was not established by the x-ray evidence pursuant to Section 718.202(a)(1), but was established by the medical opinion evidence pursuant to Section 718.202(a)(4) and, therefore, that a material change in conditions was established pursuant to Section 725.309(d), and remand the case for reconsideration of all relevant evidence under Section 718.202(a) in accordance with the standard enunciated in *Compton, supra*.

In order to avoid any possible repetition of error on remand, we will address employer's specific contentions regarding the administrative law judge's findings under Sections 718.202(a)(4) and 725.309(d). Employer contends that claimant's original 1973 claim was subject to consideration pursuant to the interim presumption at 20 C.F.R. §727.203, which only provides for invocation of the interim presumption by x-ray evidence establishing "clinical" and/or medical pneumoconiosis or evidence of disability, but notes that the evidence in claimant's original claim only consisted of a negative x-ray reading. Thus, employer contends that claimant's original claim was denied because claimant did not establish "clinical" pneumoconiosis, *see* Director's Exhibit 24. The administrative law judge found that clinical pneumoconiosis again was not demonstrated by the x-ray evidence in claimant's duplicate claim, Decision and Order at 7. Consequently, employer contends that a finding of "legal" pneumoconiosis, or pneumoconiosis as more broadly defined by the Act and the regulations, cannot provide a basis for finding a material change in claimant's condition in this duplicate claim.

We reject employer's contention. Claimant's original claim was finally denied by the Department of Labor on review on December 10, 1979, inasmuch as claimant failed to establish any element of entitlement, including "pneumoconiosis." Consequently, a finding that the existence of pneumoconiosis as defined by the Act and the regulations was established pursuant to Section 718.202(a), *i.e.*, one of the elements previously adjudicated against claimant, provides a proper basis for finding a material change in conditions established pursuant to Section 725.309(d) in accordance with the standards enunciated by the Fourth Circuit in *Rutter*.

Employer also contends that the administrative law judge erred in weighing the relevant medical opinion evidence under Section 718.202(a)(4). The administrative law judge considered the opinions of the seven physicians who provided medical reports of record. The administrative law judge properly noted that five physicians found that claimant had pneumoconiosis, including Drs. Rasmussen, Director's Exhibit 10; Employer's Exhibit 1, Daniel, Director's Exhibit 26, Ranavaya, Director's Exhibit 28; Claimant's Exhibit 1, and Zaldivar, Director's Exhibit 51; Employer's Exhibits 4, 7, who examined claimant, as well as Dr. Cohen, Director's Exhibit 28, who reviewed the evidence, whereas Drs. Fino, Employer's Exhibits 2, 8, and Tuteur, Employer's Exhibits 3, 6, who only reviewed the evidence, found that claimant did not have pneumoconiosis. The administrative law judge found the opinions of Drs. Fino and Tuteur less convincing than the physicians who found pneumoconiosis as they had not examined claimant and had not provided any rationale for

[3] The Fourth Circuit noted, however, that legal pneumoconiosis as more broadly defined by the Act and regulations is a much broader category of diseases than clinical and/or medical pneumoconiosis, and that evidence which does not establish medical pneumoconiosis should not necessarily be treated as evidence weighing against a finding of legal pneumoconiosis under Section 718.202(a), *see Compton*, *supra*.

their opinions other than the numerical superiority of the negative x-rays over the positive x-rays. Decision and Order at 10. Thus, because the "majority" of the physicians who offered opinions "based on the objective medical evidence" diagnosed pneumoconiosis, the administrative law judge found the existence of pneumoconiosis demonstrated by the medical opinion evidence pursuant to Section 718.202(a)(4).

As employer contends, the administrative law judge erred in resolving the conflict in the medical opinion evidence based on whether the physicians examined claimant and on the numerical superiority of the medical opinion evidence. The Fourth Circuit has held that an administrative law judge should not "mechanistically" credit, "to the exclusion of all other testimony," the testimony of an examining physician solely because the physician examined the claimant and/or based his finding on the "numerical weight" or "head count" of the examining physicians' opinions, but has a "statutory obligation to consider all of the relevant evidence bearing upon the existence of pneumoconiosis, *see Compton*, *supra*; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *see also Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 1-104 (1992). In addition, contrary to the administrative law judge's finding, Drs. Fino and Tuteur based their opinions on more than negative x-rays, as Dr. Fino also noted that claimant's pulmonary function study results were not typical of industrial bronchitis or chronic obstructive pulmonary disease due to coal mine dust inhalation, *see* Employer's Exhibit 8, and Dr. Tuteur noted that claimant's reversible pulmonary function study results were not consistent with coal workers' pneumoconiosis, *see* Employer's Exhibits 3, 6. *See Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). Thus, the administrative law judge did not adequately explain why the opinions of Drs. Fino and Tuteur were entitled to less weight under Section 718.202(a) than the contrary opinions of the examining physicians.

In addition, although the administrative law judge found claimant entitled to the presumption of pneumoconiosis arising out of coal mine employment pursuant to Section 718.203(b), Decision and Order at 3, he did not consider whether the presumption was rebutted. Thus, if the administrative law judge finds the existence of pneumoconiosis established pursuant to Section 718.202(a) on remand, he should then consider whether the presumption of pneumoconiosis arising out of coal mine employment pursuant to Section 718.203(b) has been rebutted or not.

Finally, employer contends that the administrative law judge erred in finding total disability due to pneumoconiosis established pursuant to Section 718.204(b), (c). Pursuant to Section 718.204(c), the administrative law judge must weigh all relevant evidence, like and unlike, with the burden on claimant to establish total respiratory disability by a preponderance of the evidence, *see Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27 (1991)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-

195 (1986). Moreover, pursuant to Section 718.204(b), claimant must prove by a preponderance of the evidence that his pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment, *see Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

The administrative law judge noted that while all of the pulmonary function study and blood gas study evidence of record was non-qualifying, a physician may rely on non-qualifying results where the physician also relies on an examination, work and medical histories and the miner's symptoms. Decision and Order at 11-12. In addition, the administrative law judge found that claimant's current work as a truck driver required little exertion and does not disprove his claim of total disability. The administrative law judge again considered the opinions of the seven physicians who provided medical reports of record. Drs. Rasmussen, and Ranavaya, who examined claimant, as well as Dr. Cohen, who reviewed the evidence, found claimant was totally disabled due to his pneumoconiosis. Drs. Daniel and Zaldivar, who both examined claimant, as well as Dr. Fino, who reviewed the evidence, found that claimant was not totally disabled from a pulmonary standpoint. Finally, Dr. Tuteur, who reviewed the evidence, found that claimant did not have pneumoconiosis and was totally disabled from a respiratory and pulmonary impairment unrelated in whole and part to his coal mine employment, Employer's Exhibit 3, but subsequently testified that claimant was not totally disabled from a pulmonary standpoint, Employer's Exhibit 6.

The administrative law judge again credited and, therefore, only considered, the opinions of examining physicians, which were evenly split as to whether claimant was totally disabled and/or totally disabled due to pneumoconiosis or not. The administrative law judge discredited Dr. Zaldivar's opinion inasmuch as the administrative law judge found his statement that simple coal workers' pneumoconiosis causes obstruction, but never causes restriction, to be contrary to the spirit and purposes of the Act in accordance with the Fourth Circuit's holding in *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 174, 19 BLR 2-265 (4th Cir. 1995). Finally, the administrative law judge gave more weight to the "reasoned" opinions of Drs. Rasmussen and Ranavaya that claimant was totally disabled due to pneumoconiosis over the contrary opinion of Dr. Daniel in light of their superior qualifications.

Initially, employer contends that the administrative law judge erred in discrediting Dr. Zaldivar's opinion as contrary to the spirit of the Act. Employer contends that Dr. Zaldivar's

[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. §727.203(a)(2)-(3) or 20 C.F.R. Part 718, Appendices B, C, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §727.203(a)(2)-(3) and 20 C.F.R. §718.204(c)(1), (2).

opinion that pneumoconiosis causes obstruction but not restriction is consistent with the Fourth Circuit's holding in *Warth* that a physician's assumption that chronic obstructive pulmonary disease cannot be caused by coal workers' pneumoconiosis or coal mine employment is contrary to the definition of pneumoconiosis as more broadly defined by the Act and the regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201. We reject employer's contention. As the administrative law judge found, Dr. Zaldivar's opinion that claimant's restrictive impairment could not be caused by simple coal workers' pneumoconiosis, because simple coal workers' pneumoconiosis does not cause a restrictive impairment, does not take into account and/or address whether claimant's restrictive impairment nevertheless satisfies the definition of pneumoconiosis as more broadly defined by the Act and the regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201; *Clinchfield Coal Co. v. Fuller*, 180 F.3d 622, 21 BLR 2-654 (4th Cir. 1999); *see also Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996)(Williams, J., dissenting); *Badger Coal Co. v. Director, OWCP [Kittle]*, 83 F.3d 414, 20 BLR 2-265 (4th Cir. 1996); *Warth*, *supra*.

Nevertheless, Dr. Zaldivar's opinion is not necessarily entitled to less weight in regard to disability, as opposed to causation of disability, *see McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *see also Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). The administrative law judge, however, did not consider the evidence relevant to whether claimant established total disability pursuant to Section 718.204(c), including Dr. Zaldivar's opinion, separate from the evidence relevant under Section 718.204(b) as to whether pneumoconiosis was at least a contributing cause of any totally disabling respiratory impairment established under Section 718.204(c), *see Hobbs, supra*; *Robinson, supra*.

Moreover, as employer again properly notes, the Fourth Circuit has held that an administrative law judge should not "mechanistically" credit, "to the exclusion of all other testimony," the testimony of an examining physician solely because the physician examined the claimant, but has a "statutory obligation to consider all of the relevant evidence bearing upon the existence of pneumoconiosis and its contribution to the claimant's disability, *see Compton, supra*; *Hicks, supra*; *Akers, supra*; *see also Grizzle, supra*; *Cochran, supra*. Thus, the administrative law judge did not adequately explain why the opinions of Drs. Fino and Tuteur were entitled to less weight under Section 718.204(b) and (c) than the contrary opinions of the examining physicians credited by the administrative law judge. In addition, although the administrative law judge gave greater weight to Dr. Rasmussen's opinion in light of his superior qualifications as a board-certified physician in internal medicine, a review of the record does not indicate Dr. Rasmussen's qualifications, *see Tackett, supra*. Consequently, the administrative law judge's findings pursuant to Section 718.204(c) and (b) are vacated and the case is remanded for the administrative law judge to weigh all relevant evidence, like and unlike, pursuant to Section 718.204(c), *see Budash, supra*; *Fields, supra*; *Rafferty, supra*; *Shedlock, supra*, and, if reached, for reconsideration pursuant to Section 718.204(b), *see Hobbs, supra*; *Robinson, supra*.

Finally, although employer also contends that the administrative law judge did not consider whether claimant's current work was comparable to his previous coal mine employment, *see* 20 C.F.R. §718.204(b)(2), the administrative law judge did find that claimant's current work as a truck driver required little exertion and did not disprove his claim of total disability. Nevertheless, the administrative law judge should compare claimant's current work with his previous coal mine employment on remand pursuant to Section 718.204(b)(2), *see generally Harris v. Director, OWCP*, 3 F.3d 103, 18 BLR 2-1 (4th Cir. 1993).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge