BRB No. 01-0316 BLA

GEORGE W. SHORES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MIDLAND COAL COMPANY	)	DATE ISSUED:
	)	
and	)	
	)	
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 of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson and Anne Megan Davis (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Mark E. Solomons (Greenberg Traurig LLP), Washington, D.C., for employer.

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

Employer appeals the Decision and Order (99-BLA-1316) of Administrative Law Judge Richard T. Stansell-Gamm 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).[1] The administrative law judge found at least twenty-six

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20

years of coal mine employment established, as stipulated by the parties, and noted that, inasmuch as the instant claim was a duplicate claim, claimant must establish a material change in conditions in accordance with the standard enunciated by the United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, in *Peabody Coal Co. v. Spese*, 117 F.3d 1001, 21 BLR 2-113 (7th Cir. 1997)(*en banc rehearing*), *modifying*, 94 F.3d 369 (7th Cir. 1996), *and affirming* 19 BLR 1-45 (1995).[2] The administrative law judge adjudicated the instant claim pursuant to 20 C.F.R. Part 718 and found that the relevant, newly submitted medical opinion evidence established the existence of pneumoconiosis and, therefore, established a material change in conditions. Next, the administrative law judge considered all of the evidence of record and found the existence of pneumoconiosis arising out of coal mine employment established. The administrative law judge further found that total disability due to pneumoconiosis was established. Accordingly,

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C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2] Claimant has previously filed three claims, all of which were finally denied by the district director, *see* Director's Exhibits 16-18. Claimant originally filed a claim on May 22, 1981, which was denied by the district director on July 28, 1981, because claimant failed to establish any element of entitlement, Director's Exhibit 16. Claimant filed a second, duplicate claim on October 5, 1994, which was denied by the district director as abandoned on November 28, 1994, Director's Exhibit 17. Prior to the instant claim, claimant filed a duplicate claim on July 29, 1996, which was finally denied by the district director pursuant to 20 C.F.R. §725.309(d)(2000), *see* 20 C.F.R. §725.2(c), on November 5, 1996, because claimant failed to establish any element of entitlement, Director's Exhibit 18. Claimant took no further action on this claim. Subsequently, claimant filed the instant, duplicate claim, at issue herein, on November 21, 1998, Director's Exhibit 1.

benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding the existence of pneumoconiosis, a material change in conditions and total disability due to pneumoconiosis established. Claimant responds, urging that the administrative law judge's Decision and Order awarding benefits be affirmed. The Director, Office of Workers' Compensation Programs, as a party-in-interest, has not responded to this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Seventh Circuit has held that a material change in conditions is established pursuant to Section 725.309(d)(2000) where the miner did not have pneumoconiosis at the time of the prior application for benefits but has since contracted it and become totally disabled by it, or where the miner's pneumoconiosis has progressed to the point of total respiratory disability since the filing of the prior application, *see Sahara Coal Co. v. Director, OWCP* [*McNew*], 946 F.2d 554, 15 BLR 2-227 (7th Cir. 1991). Moreover, the Seventh Circuit has held that in order to prevail with a duplicate claim, claimant must show that something capable of making a difference has changed since the record closed in the first claim, *i.e.*, at least one element that might independently have supported a decision against the claimant has now been shown to be different, *see Spese*, *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*.

Employer contends that the administrative law judge erred in finding the existence of pneumoconiosis and a material change in conditions established.[3] Considering the relevant

[3] The administrative law judge found that none of the newly submitted x-ray evidence, developed since the denial of claimant's previous claim, nor the previously submitted x-ray evidence, established the existence of pneumoconiosis pursuant to Section 718.202(a)(1) and that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(2)-(3)(2000). Decision and Order at 5-6, 16. Because the administrative law judge's findings that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1)-(3)(2000) are not challenged on appeal, they are affirmed, *see Skrack v. Island Creek Coal*

the newly submitted medical opinion evidence, developed since the denial of claimant's previous claim,[4] the administrative law judge found that the opinions of Drs. Skillrud and Selby were not as well reasoned as Dr. Cohen's. Decision and Order at 14-15.[5] Specifically, the administrative law judge found that Dr. Skillrud's opinion that claimant did not have pneumoconiosis was apparently based only on the narrow definition of medical pneumoconiosis, as opposed to "legal" pneumoconiosis. Further, the administrative law judge noted that Dr. Skillrud did not consider whether coal dust exposure aggravated claimant's emphysema and apparently believed that obstruction is caused by coal dust only when x-ray evidence of progressive massive fibrosis is also present. In addition, the administrative law judge found that Dr. Skillrud did not provide any objective evidence that claimant's obstructive impairment was reversible and that claimant's obstructive impairment

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Co., 6 BLR 1-710 (1983).

[4] Initially, the administrative law judge found that the treatment evaluations from Drs. Degelman, Shima and Sanchez, noting a "history" of black lung disease, carried little probative weight and were not well reasoned because the doctors did not indicate whether they agreed with the diagnosis or explain the basis for their opinions that claimant had pneumoconiosis. Decision and Order at 13; Claimant's Exhibit 2. In addition, the administrative law judge gave less probative weight to the opinion of Dr. Marder, that claimant's coal dust exposure contributed greatly to his chronic obstructive pulmonary disease because it was based on an inaccurate ½ pack a day smoking history of fourteen years when, in fact, claimant had a ½ pack daily smoking history of thirty years. Decision and Order at 13; Director's Exhibit 6. Because the administrative law judge's findings regarding the opinions of Drs. Degelman, Shima, Sanchez, and Marder are not challenged by any party on appeal, they are affirmed, *see Skrack*, *supra*.

[5] Dr. Cohen, a board-certified physician in internal medicine and pulmonary disease and a B-reader, examined claimant, reviewed the evidence of record and found that claimant had severe chronic obstructive pulmonary disease substantially related to his coal mine employment, as well as his smoking. Claimant's Exhibits 1-2. Dr. Skillrud, a board-certified physician in internal and pulmonary medicine, examined claimant, reviewed other evidence of record, and found that claimant suffered from moderately severe obstruction due to chronic obstructive asthma and emphysema due to smoking, noting that the medical literature indicates that significant obstruction caused by coal dust is rare in miners absent findings of progressive massive fibrosis, Employer's Exhibits 1, 3. Similarly, Dr. Selby, a board-certified physician in internal and pulmonary medicine and a B-reader, reviewed the evidence of record, and found that claimant suffered from chronic obstructive pulmonary disease due to asthma and emphysema from smoking, noting that no medical literature indicates that coal dust contributes to chronic obstructive pulmonary disease absent asthma or emphysema, Employer's Exhibits 2, 4.

was caused by asthma and not pneumoconiosis. The administrative law judge also noted that, while Dr. Skillrud had not administered a post-bronchodilator pulmonary function study which would indicate whether claimant's impairment was reversible, earlier pulmonary function studies of record had indicated little reversibility.[6] Finally, the administrative law judge found that Dr. Skillrud did not integrate all of the objective evidence of record, including abnormal blood gas study results, as well as Dr. Cohen had done in forming his opinion.

Similarly, the administrative law judge found that Dr. Selby's opinion that claimant did not have pneumoconiosis was also based only on the narrow definition of medical pneumoconiosis, as opposed to "legal" pneumoconiosis. Specifically, the administrative law judge noted that Dr. Selby also did not consider whether coal dust exposure aggravated claimant's emphysema, but instead relied on negative x-ray evidence and the lack of support in medical literature for the opinion that coal dust may cause chronic obstructive pulmonary disease. In addition, the administrative law judge considered Dr. Selby's opinion, that because claimant did not have a significant obstructive impairment when he retired from coal mine employment, his present, significant, obstructive impairment was not caused by his coal dust exposure but must be due to smoking and a recent onset of asthma; and the administrative law judge determined the opinion was contrary to the legally recognized fact that pneumoconiosis is a progressive disease. Moreover, the administrative law judge found Dr. Selby's opinion, attributing claimant's obstructive impairment to smoking, rather than claimant's coal dust exposure, was less reasonable when considering the fact that claimant quit smoking over a decade prior to his retiring from coal mine employment. Finally, the administrative law judge found that Dr. Selby did not provide any objective medical basis for his diagnosis of asthma or address the contrary pulmonary function study evidence which indicated that claimant's obstructive impairment was not reversible. Decision and Order at 14-15.

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[6] Contrary to employer's contention that there was "no reversibility test," the administrative law judge noted that while Dr. Skillrud did not administer a post-bronchodilator pulmonary function study from which he could determine whether claimant's obstructive impairment was reversible; post-bronchodilator pulmonary function study results from 1996 did not indicate reversibility, *see* Director's Exhibit 18.

In contrast, the administrative law judge found that Dr. Cohen provided the best reasoned and documented opinion, since he had considered the legal definition of pneumoconiosis and had found that both claimant's coal dust exposure and smoking caused his obstructive impairment because claimant had exhibited a decrease in his FEV1 results on the pulmonary function study with a simultaneous increase in his respiratory symptoms.[7] In addition, the administrative law judge found that Dr. Cohen integrated all of the objective evidence of record, including claimant's x-ray and abnormal blood gas study results, in forming his opinion. Finally, the administrative law judge, having reviewed the contrary opinions of Drs. Skillrud and Selby and the objective evidence of record, found that Dr. Cohen presented the best documented opinion. The administrative law judge also found Dr. Cohen's opinion to be the best documented and reasoned when considered in conjunction with the previously submitted medical opinion evidence from Drs. Sidler, Kim and Dababneh. Decision and Order at 16-17. Specifically, the administrative law judge found that the 1995 treatment evaluation from Dr. Dababneh, Claimant's Exhibit 2, noting a "history" of black lung disease and chronic obstructive pulmonary disease, carried little probative value, as Dr. Dababneh did not explain the basis for his reference to black lung disease or indicate the etiology of claimant's chronic obstructive pulmonary disease. Although Dr. Kim diagnosed chronic obstructive pulmonary disease "probably due to coal mining and/or smoking" in 1996, Director's Exhibit 18, the administrative law judge found that he did not adequately explain the basis for this conclusion. Similarly, the administrative law judge found that while Dr. Sidler diagnosed chronic bronchitis and asthma, he did not explain the basis for his checking "no" to the question of whether those conditions were related to claimant's coal dust exposure. Thus, the administrative law judge concluded that the evidence established the existence of pneumoconiosis and, therefore, a material change in conditions.

Employer contends, however, that, because the previously submitted medical opinion evidence had already diagnosed a chronic obstructive pulmonary disease, Dr. Cohen's opinion diagnosing chronic obstructive pulmonary disease, based on a non-qualifying pulmonary function study, did not provide any new evidence upon which to find a material change in conditions established pursuant to the standard enunciated in *Spese*, *supra*, because, as employer asserts, Dr. Cohen believed that claimant's chronic obstructive pulmonary disease was coal-dust related "all along." Contrary to employer's contention, however, the administrative law judge noted that the previously submitted medical opinion evidence either did not address the etiology of claimant's chronic obstructive pulmonary disease or did not provide any adequate or sufficiently credible evidence regarding the

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[7] Contrary to employer's contention, Dr. Cohen, not the administrative law judge, noted the significance of the fact that claimant's decrease in his FEV1 results occurred simultaneously with an increase in his respiratory symptoms, *see* Claimant's Exhibit 1.

etiology of claimant's chronic obstructive pulmonary disease. Thus, the administrative law judge properly concluded that the previously submitted medical opinion evidence was insufficient to establish "legal" pneumoconiosis as defined by the Act and regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201.

In addition, contrary to employer's assertion that Dr. Cohen believed claimant's chronic obstructive pulmonary disease was coal-dust related "all along," Dr. Cohen had not submitted any opinion prior to the filing of the instant, duplicate claim, and his opinion regarding the etiology of claimant's chronic obstructive pulmonary disease was the result of a new examination conducted after the denial of claimant's previous claim. Moreover, as the administrative law judge noted, in new opinions submitted after the denial of claimant's previous claim, even Dr. Selby indicated that there had been "considerable worsening" in the progression of claimant's obstructive disease from the end of his coal mine employment until 1999, *see* Employer's Exhibit 2, and Dr. Skillrud noted that claimant had progressively worsening dyspnea over the past four to six years, *see* Employer's Exhibit 1. *See* Decision and Order at 10. Accordingly, because the previously submitted medical opinion evidence was insufficient to establish "legal" pneumoconiosis as defined by the Act and regulations, *see* 30 U.S.C. §902(b); 20 C.F.R. §718.201, but the administrative law judge found Dr. Cohen's newly submitted opinion was sufficient to establish "legal" pneumoconiosis, the administrative law judge properly found a material change in conditions had been established, *i.e.*, something capable of making a difference has changed since the record closed in the first claim; at least one element that might independently have supported a decision against the claimant has now been shown to be different. 20 C.F.R. §725.309(d)(2000), *see Spese*, *supra*.[8]

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[8] In any event, as claimant contends, the administrative law judge's findings that Dr. Cohen's newly submitted opinion, weighed in conjunction with the other relevant evidence of record, was sufficient to establish total disability and causation, provide alternative, independent bases for finding a material change in conditions established, as these were also elements of entitlement that were previously found not to have been established. Thus, because the administrative law judge's findings regarding total disability and causation are

affirmed, *see infra*, error, if any, by the administrative law judge in relying on his finding that the existence of pneumoconiosis was established by the newly submitted evidence as a basis for finding a material change in conditions would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Employer also contends that the administrative law judge erred in substituting his opinion for those of medical experts when he discredited the opinions of Drs. Skillrud and Selby that coal dust rarely causes chronic obstructive pulmonary disease in the absence of x-ray findings of progressive massive fibrosis. Employer contends that the administrative law judge erred in ignoring the conclusions of Drs. Skillrud and Selby that claimant's test results indicated emphysema. Contrary to employer's contentions, however, the administrative law judge properly found that because the opinions of Drs. Skillrud and Selby did not address whether claimant's obstructive impairment and emphysema were substantially aggravated by claimant's coal dust exposure they could not establish "legal" pneumoconiosis as defined at 20 C.F.R. §718.201(a)(2) and (b).[9]

Further, employer contends that there is "no scientific support" for the administrative law judge's "presumption" that pneumoconiosis is a progressive disease. Contrary to employer's contention, however, the definition of pneumoconiosis under revised Section 718.201 recognizes that pneumoconiosis is a "latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure," *see* 20 C.F.R. §718.201(c). Moreover, the Seventh Circuit has accepted the view that pneumoconiosis is progressive, noting that the etiology of pneumoconiosis is a question of legislative fact that may only be invalidated by medical evidence, which employer has not submitted in this case, *see Old Ben Coal Co. v. Scott*, 144 F.3d 1045, 1047, 21 BLR 2-391, 2-395 (7th Cir. 1998); *see also Spese*, *supra*; *Freeman United Coal Mining Co. v. Hilliard*, 65 F.3d 667, 19 BLR 2-282, 2-287 (7th Cir. 1995). Thus, the administrative law judge properly found that Dr. Selby's opinion, that claimant's present significant obstructive impairment was not caused by his coal dust exposure because claimant did not have a significant obstructive impairment when he retired from coal mine employment, was contrary to the legally recognized fact that

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[9] The comments accompanying the revised definition of pneumoconiosis at 20 C.F.R. §718.201 also refer to the "overwhelming scientific and medical evidence demonstrating that coal mine dust exposure can cause obstructive lung disease," *see* 65 Fed. Reg. 79944 (Dec. 20, 2000), and that the revised definition will render invalid, as inconsistent with the regulations, medical opinions, such as Dr. Selby's, which categorically exclude obstructive lung disorders from occupationally-related pathologies, *see* 65 Fed. Reg. 79938 (Dec. 20, 2000).

pneumoconiosis is progressive disease.

In addition, employer contends that the administrative law judge ignored the fact that both Drs. Skillrud and Selby were at least equally or better qualified than Dr. Cohen.[10] Contrary to employer's contention, however, the administrative law judge is not required to defer to a physician's opinion based on his qualifications, *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). In this case, the administrative law judge, within his discretion, gave greater weight to Dr. Cohen's opinion because he found it better supported by the objective evidence, *see Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985), and based on a more thorough and complete review of the evidence of record, *see Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Hall v. Director, OWCP*, 8 BLR 1-193 (1985). It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to determine whether an opinion is documented and reasoned, *see Clark, supra*; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Employer's contention is, therefore, rejected.

The administrative law judge, as the trier-of-fact, has broad discretion to assess the evidence of record and draw his own conclusions and inferences therefrom, *see Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark*, *supra*, and the Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge when rational and supported by substantial evidence, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, the administrative law judge's finding that the existence of pneumoconiosis was established by medical opinion evidence is affirmed as rational and supported by

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[10] Drs. Cohen and Selby are both similarly qualified board-certified physicians in internal medicine and pulmonary disease and are also B-readers, Claimant's Exhibit 1; Employer's Exhibit 2, while Dr. Skillrud is a board-certified physician in internal and pulmonary medicine, Employer's Exhibit 1.

substantial evidence.[11]

[11] In addition, because the administrative law judge's finding that pneumoconiosis arising out of coal mine employment pursuant to Section 718.203(b)(2000) has not been challenged on appeal, it is affirmed, *see Skrack*, *supra*.

Next, employer contends that the administrative law judge erred in finding total disability established pursuant to Section 718.204(c)(2000), as revised at 20 C.F.R. §718.204(b)(2). Employer contends that the medical opinion evidence does not establish that claimant is disabled from a "purely" respiratory standpoint. In considering all of the relevant evidence of record on the merits, the administrative law judge found that total disability was not demonstrated pursuant to Section 718.204(c)(1)-(3)(2000), as revised at 20 C.F.R. §718.204(b)(2)(i)-(iii).[12] Pursuant to Section 718.204(c)(4), the administrative law judge initially determined the exertional requirements of claimant's last coal mine job, which he found entailed heavy manual labor and required claimant to lift and carry up to 100 pounds and, "[w]ith the assistance of others," also to lift 300 pound items. Decision and Order at 22-23.[13] Considering all of the medical opinion evidence of record, the administrative law judge found Dr. Cohen's opinion, that claimant's severe obstructive defect would disable him from performing his last coal mine job which required heavy exertion, to be the most probative. *See* Claimant's Exhibit 1. The administrative law judge found Dr. Sidler's 1981 opinion had little probative value as to whether claimant was presently disabled as Dr. Sidler did not make a definitive finding regarding disability. *See* Director's Exhibit 16. Similarly, the administrative law judge found that the treatment records from Drs. Sanchez, Dababneh, Shima and Degelman did not make any comment regarding disability. *See* Claimant's Exhibit 2. The administrative law judge further found that while Dr. Kim's diagnosis of a moderate to marked impairment, Director's Exhibit 18, Dr. Marder's diagnosis of a moderate to severe impairment, Director's Exhibit 6, and Dr. Skillrud's diagnosis of a moderately severe impairment, Employer's Exhibits 1, 3, do not provide a definitive statement concerning whether claimant was totally disabled; their diagnoses, nonetheless, when considered in light of the heavy manual labor required by claimant's last coal mine job, support a finding of total disability. Further, while the administrative law judge noted that Dr. Selby's opinion did not specifically indicate that claimant would be disabled due to his pulmonary condition alone, the administrative law judge found that his opinion, that claimant would have the respiratory and/or pulmonary capacity to perform his previous coal mine job, "except" due to his cardiac disease, "emphysema" and "asthma," *see* Employer's Exhibit 4, nonetheless, provided support for Dr. Cohen's opinion, that claimant was totally disabled due to his pulmonary impairment. Thus, finding little probative, contrary evidence, the administrative law judge found total disability established.

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[12] Inasmuch as the administrative law judge's findings pursuant to Section 718.204(c)(1)-(3)(2000), now 20 C.F.R. §718.204(b)(2)(i)-(iii), are not challenged by any party on appeal, they are affirmed, *see Skrack*, *supra*.

[13] Thus, contrary to employer's contention, the administrative law judge did not indicate that claimant was required to lift 300 pounds by himself.

Contrary to employer's contention , the administrative law judge permissibly credited the opinion of Dr. Cohen, who found that claimant's pulmonary impairment was disabling in and of itself. Moreover, contrary to employer's contention, the administrative law judge did not discount the opinions of Drs. Selby and Skillrud regarding disability because they did not diagnose pneumoconiosis; rather, he found their opinions regarding the extent of claimant's pulmonary impairment, when considered in conjunction with the exertional requirements of claimant's last coal mine job, to support Dr. Cohen's opinion that claimant is totally disabled due to his pulmonary impairment. Thus, because employer has not otherwise challenged the administrative law judge's finding that total disability was established pursuant to Section 718.204(c)(2000), as revised at 20 C.F.R. §718.204(b)(2), it is affirmed as rational and supported by substantial evidence.

Finally, employer contends that the administrative law judge erred in finding causation established. The administrative law judge found that because Drs. Sidler, Sanchez, Dababneh, Shima and Degelman did not make any relevant comment or definitive finding regarding disability, their opinions had little probative value as to whether claimant's disability was due to pneumoconiosis. Similarly, the administrative law judge found that Dr. Kim did not discuss the cause of claimant's impairment (as opposed to claimant's pulmonary disease). In addition, contrary to employer's contention that the administrative law judge did not consider the competing medical opinions of Drs. Selby and Skillrud, the administrative law judge permissibly found that because Drs. Selby and Skillrud did not believe that claimant had pneumoconiosis (*i.e.*, legal or medical pneumoconiosis), their opinions were not probative regarding the cause of claimant's disability, *see Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986); *see also Searls v. Southern Ohio Coal Co.*, 11 BLR 1-161 (1988); *Kozele v. Rochester & Pittsburg Coal Co.*, 6 BLR 1-378 (1983). Moreover, although Dr. Marder attributed claimant's impairment to coal dust exposure, the administrative law judge dismissed his opinion because it was based on an inaccurate smoking history. Thus, the administrative law judge found that Dr. Cohen's opinion was the sole, remaining, highly probative opinion regarding the cause of claimant's disability and because Dr. Cohen found that claimant's coal dust exposure played a significant role in claimant's pulmonary disability, the administrative law judge found total disability due to pneumoconiosis established.

Although employer contends that pneumoconiosis is not a necessary condition of claimant's disability, but that claimant is merely disabled due to old age since he retired from coal mine employment at a normal retirement age, there is no medical opinion evidence of record suggesting that claimant is only disabled due to old age. Moreover, while employer contends that Dr. Cohen's opinion is not adequately supported or documented by the evidence of record, such a determination is for the administrative law judge to make, *see Clark*, *supra*; *Fields*, *supra*; *Lucostic*, *supra*, and the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge if they are

rational and supported by substantial evidence, *see Anderson*, *supra*; *Worley*, *supra*. Thus, because the administrative law judge's finding that total disability due to pneumoconiosis was established is rational and supported by substantial evidence, it is affirmed. *See* 20 C.F.R. §718.204(c)(1). Consequently, the administrative law judge's findings that claimant established a material change in conditions and entitlement to benefits under Part 718 are affirmed.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge