U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 17-0189 BLA

HELEN FAYE FORD (o/b/o JERRY W. FORD, deceased)	)	
Claimant-Respondent	)	
v.	)	
CHEVRON MINING, INCORPORATED/ P & M COAL MINING COMPANY	)	DATE ISSUED: 01/29/2018
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 Awarding Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, Kentucky, for employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-05404) of Administrative Law Judge Jonathan C. Calianos rendered on a claim filed pursuant to

the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's subsequent claim filed on May 9, 2011.[1]

The administrative law judge credited the miner with 14.25 years of underground coal mine employment[2] and adjudicated the claim pursuant to the regulatory provisions at 20 C.F.R. Parts 718 and 725. The administrative law judge found that the new evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c).[3] Considering the claim on the merits, the administrative law judge accorded greater weight to the evidence submitted with the current claim, as more probative of the miner's physical condition. The administrative law judge found that the evidence established the existence of legal and clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a), total disability pursuant to 20 C.F.R. §718.204(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's findings that the new evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2) and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). Employer also contends that the administrative law judge erred in finding, on the merits, that the miner had legal and clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and was totally disabled, due to pneumoconiosis, pursuant to 20 C.F.R. §718.204(b), (c).

[1] This is the miner's fourth claim for benefits. His most recent prior claim, filed on August 10, 2009, was denied on March 31, 2010 by the district director, who found that the miner did not establish that he had a totally disabling respiratory or pulmonary impairment. Director's Exhibit 3. The miner died on March 15, 2012. Claimant is the miner's widow, who is pursuing the miner's claim on his behalf. Claimant's Exhibit 5.

[2] The administrative law judge correctly observed that because the miner had less than fifteen years of coal mine employment, claimant cannot invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4). 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305; Decision and Order at 7.

[3] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3).

Neither claimant[4] nor the Director, Office of Workers' Compensation Programs, filed a response brief in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Change in an Applicable Condition of Entitlement – Total Disability

The miner's prior claim was denied because he did not establish the existence of total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2). Director's Exhibit 3. Consequently, to obtain review on the merits of the current claim, claimant had to submit new evidence developed since the denial of the miner's prior claim establishing that he was totally disabled. 20 C.F.R. §725.309(c); *see Buck Creek Coal Co. v. Sexton*, 706 F.3d 756, 758-59, 25 BLR 2-221, 2-227-28 (6th Cir. 2013); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004).

Because there are no new qualifying pulmonary function studies or qualifying arterial blood gas studies,[6] the administrative law judge properly found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii).[7] Decision

[4] Claimant was represented by counsel before the administrative law judge. Hearing Transcript at 4.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 1.

[6] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] In reviewing the pulmonary function studies and blood gas studies, the administrative law judge erroneously considered evidence from the miner's prior claims, rather than strictly the new evidence, as required pursuant to 20 C.F.R. §725.309(c). The administrative law judge's error is harmless, however, as all of the objective test results, new and old, are non-qualifying. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

and Order at 8-10; Director's Exhibits 2, 3, 16; Claimant's Exhibit 3. Furthermore, because there is no evidence of cor pulmonale with right-sided congestive heart failure in the record, claimant is precluded from establishing total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). The administrative law judge next considered the opinions of Drs. Chavda, Houser, and Baker. Decision and Order at 11-15. Dr. Chavda opined that the miner was totally disabled from a respiratory impairment. Decision and Order at 15; Director's Exhibit 16. The administrative law judge found that "Dr. Houser did not provide an analysis of whether or not the miner's respiratory condition prior to his death would have prevented him from performing his usual coal mine employment." Decision and Order at 15; Employer's Exhibit 5. Finally the administrative law judge found that Dr. Baker focused his discussion on the etiology of the miner's impairment.[8] Decision and Order at 15; Claimant's Exhibit 4.

The administrative law judge credited Dr. Chavda's 2011 opinion,[9] finding that the doctor considered a complete picture of the miner's recent pulmonary condition and provided a complete discussion of his findings. Decision and Order at 15; Director's Exhibit 16. The administrative law judge further found that "[n]either . . . Dr. Houser [n]or Dr. Baker disputes Dr. Chavda's finding that [the miner] was totally disabled . . . ." Decision and Order at 15. The administrative law judge therefore found that Dr. Chavda's opinion established total disability at 20 C.F.R. §718.204(b)(2)(iv).

Employer argues that the administrative law judge erred in crediting Dr. Chavda's disability opinion. Employer contends that Dr. Chavda's opinion is insufficient to support claimant's burden of proof, because it is based on non-qualifying pulmonary function studies and is, therefore, inconsistent with federal regulations. Employer's Brief at 16-19. Employer also asserts that Dr. Chavda's opinion is not undisputed. *Id.* at 18. Employer's arguments have merit, in part.

[8] In an August 28, 2009 report, submitted with the prior claim, Dr. Baker diagnosed a mild respiratory impairment, noting that the miner's pulmonary function studies and blood gas studies were reduced, but non-qualifying. Decision and Order at 15; Director's Exhibit 3. In connection with the current claim, Dr. Baker reviewed additional medical records, including Dr. Chavda's opinion. Decision and Order at 15; Claimant's Exhibit 4. In a report dated May 4, 2015, Dr. Baker referenced the miner's respiratory impairment and his disability but did not provide a clear opinion regarding the extent of the miner's disability. Decision and Order at 15; Claimant's Exhibit 4.

[9] Dr. Chavda examined the miner on May 25, 2011 and May 26, 2011 for the Department of Labor (DOL), and was deposed on September 23, 2011. Director's Exhibit 16 at 40.

Initially, contrary to employer's contention, the fact that claimant did not establish total disability based on pulmonary function study or blood gas study evidence does not preclude a finding of total disability based on the medical opinion evidence. *See* 20 C.F.R. §718.204(b)(2)(iv); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744, 21 BLR 2-203, 2-211 (6th Cir. 1997). Non-qualifying test results alone do not establish the absence of an impairment. *Estep v. Director, OWCP*, 7 BLR 1-904, 1-905 (1985). Rather, the relevant inquiry at 20 C.F.R. §718.204(b)(2)(iv) is whether the miner's respiratory or pulmonary impairment precluded the performance of his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1)(i), 718.204(b)(2)(iv). Here, Dr. Chavda opined that because the miner's MVV result met the disability criteria and his FEV_1 result was "barely above" the criteria, he did not have enough lung capacity to be employed in a coal mining job. Decision and Order at 15; Director's Exhibit 16. As it is the province of the administrative law judge to evaluate the medical evidence and to assess credibility and probative value, we affirm the administrative law judge's determination that Dr. Chavda's opinion is credible and reject employer's argument to the contrary.[10] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989).

We agree with employer, however, that the administrative law judge mischaracterized Dr. Chavda's opinion as "undisputed." Contrary to the administrative law judge's finding, Dr. Houser specifically addressed the issue of disability, stating that he did "not believe the data and evidence [he reviewed] establishe[d] the presence of a disabling respiratory impairment."[11] Decision and Order at 15; Employer's Exhibit 5 at 3. Because the administrative law judge mischaracterized the opinions of Drs. Chavda and Houser, we vacate the administrative law judge's finding that the medical opinion

[10] We note however that to the extent the administrative law judge accorded greater weight to Dr. Chavda's opinion as "the most recent assessment of [the miner's] pulmonary condition," this was error. Both Dr. Houser and Dr. Baker reviewed Dr. Chavda's objective test results, medical report and deposition testimony and, thus, had a similar picture of the miner's respiratory condition upon which to base their opinions. Claimant's Exhibit 4; Employer's Exhibit 5.

[11] On June 22, 2012, Dr. Houser provided a medical records review. Comparing the miner's 2009 DOL examination and the 2011 DOL examination, Dr. Houser noted that the 2011 FEV_1 results were only 0.01 L lower than those obtained in 2009, and that the resting and exercise blood gas results were normal. Employer's Exhibit 5 at 3.

evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).[12] Therefore, we must also vacate the administrative law judge's findings that the evidence established total disability, overall, pursuant to 20 C.F.R. §718.204(b)(2), and a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c).[13]

On remand the administrative law judge must reconsider Dr. Houser's medical opinion and determine whether it is adequately reasoned and documented on the issue of total disability. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). If the administrative law judge determines that Dr. Houser's opinion is entitled to probative weight, he must weigh it against Dr. Chavda's opinion to determine whether claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv).[14] The administrative law judge is instructed to set forth his

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[12] We reject employer's assertion that "the administrative law judge failed to consider that the lay testimony did not corroborate a finding of total disability." Employer's Brief at 18-19. Claimant testified that after the miner retired he had to quit mowing the grass and weed-eating. Claimant also testified that the miner played guitar and sang in a band, but had to have others carry his equipment. She stated that the miner's respiratory condition deteriorated to the extent that he would have to sit rather than stand during a performance, have others sing his part for him, and eventually had to quit the band three years prior to his death. Hearing Transcript at 20-22.

[13] We reject employer's argument that the administrative law judge "erred by finding . . . a material change in condition[s] per 20 C.F.R. [§]725.309" without performing a qualitative comparison of the old and new evidence. Employer's Brief at 10-11. Under the revised version of 20 C.F.R. §725.309, which is applicable to this claim filed after January 19, 2001, claimant no longer has the burden of proving a "material change in conditions." *See* 20 C.F.R. §§725.2(c), 725.309(d). Rather, claimant must show that one of the applicable conditions of entitlement has changed since the date upon which the prior denial became final by submitting new evidence that establishes an element of entitlement upon which the prior denial was based. *See* 20 C.F.R. §725.309(d)(2), (3); *White*, 23 BLR at 1-3. Therefore, on remand the administrative law judge is not required to conduct a qualitative comparison of the old and new evidence.

[14] The administrative law judge correctly found that Dr. Baker's 2015 opinion did not address the extent of the miner's disability. Claimant's Exhibit 4. As set forth above, however, and contrary to employer's contention, the administrative law judge was not required to compare the evidence submitted in the miner's prior claim, including Dr. Baker's 2009 opinion, with the new evidence, in order to determine whether claimant established a change in an applicable condition of entitlement. *See* 20 C.F.R. §725.309(c).

credibility findings on remand in detail, including the underlying rationale for his decision, as required by the Administrative Procedure Act (APA). 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

On remand, should the administrative law judge find that the new evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), he must weigh all the relevant new evidence together, both like and unlike, to determine whether claimant has established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc).

If the administrative law judge finds that the new evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2), claimant will have established a change in the applicable condition of entitlement. However, if the administrative law judge finds that the new evidence does not establish that the miner was totally disabled, an essential element of entitlement, he must deny benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Merits of the Claim

In the interest of judicial economy, we will address employer's contentions that the administrative law judge erred in finding, on the merits of the claim, that the medical opinion evidence establishes both legal pneumoconiosis[15] and clinical pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4). We will also address employer's contentions that the administrative law judge erred in finding that the medical opinion evidence established total disability, pursuant to 20 C.F.R. §718.204(b)(2)(iv), and total disability due to pneumoconiosis, pursuant to 20 C.F.R. §718.204(c).

[15] Legal pneumoconiosis refers to "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 is defined as "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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." 20 C.F.R. §718.201(a)(1).

Existence of Pneumoconiosis

Legal Pneumoconiosis

The administrative law judge considered the medical opinions of Drs. Chavda, Baker, and Houser. Decision and Order at 21-22; Director's Exhibit 16; Claimant's Exhibit 4; Employer's Exhibit 5. Drs. Chavda and Baker diagnosed legal pneumoconiosis, while Dr. Houser found no evidence of legal pneumoconiosis. The administrative law judge accorded little weight to Dr. Chavda's opinion as contradictory.[16] Decision and Order at 21; Director's Exhibit 16. Dr. Baker opined that the miner's coal dust exposure was a substantial contributing cause of his chronic obstructive pulmonary disease (COPD), along with cigarette smoking. Director's Exhibit 3 at 48; Claimant's Exhibit 4. In contrast, estimating that coal dust exposure contributed only 11.6% to the miner's respiratory decline in FEV_1 values, and that cigarette smoking contributed 88.4%, Dr. Houser opined that there is no evidence of legal pneumoconiosis. Employer's Exhibit 5. Finding that Dr. Baker's opinion was well-supported by the medical literature and the preamble to the regulations, the administrative law judge accorded the greatest weight to Dr. Baker's opinion to find legal pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(4).

Employer contends that the administrative law judge erred in relying on Dr. Baker's opinion to establish the existence of legal pneumoconiosis when Dr. Baker never specifically diagnosed the disease. Employer also asserts that Dr. Baker relied on an inaccurate length of coal mine employment, and failed to consider the miner's "extreme" smoking history or that the miner developed lung cancer. Employer's Brief at 15-16. Employer's contentions lack merit.

[16] In his May 26, 2011 report, Dr. Chavda stated that he "made the diagnosis of legal pneumoconiosis" based on the miner's history of coal dust exposure, symptoms, and pulmonary function studies showing mild restrictive and moderate obstructive disease. Director's Exhibit 16 at 40. Noting that the miner had a much greater history of cigarette smoke exposure, however, Dr. Chavda seemingly contradicted his diagnosis, stating that "all of the miner's symptoms and [pulmonary function study] findings are related to cigarette smoking." *Id.* Similarly, in his deposition, Dr. Chavda initially testified that coal dust exposure and long term smoking were both etiologies of the miner's chronic obstructive pulmonary disease. *Id.* at 76. Subsequently, however, Dr. Chavda agreed that while the miner's legal pneumoconiosis was substantially caused by his work in the coal mines, all of his symptoms and objective test results were due to cigarette smoking. *Id.* at 78-80.

In his 2009 opinion, Dr. Baker opined that the miner had legal pneumoconiosis. He explained that the primary cause of the miner's COPD, chronic bronchitis, and resting arterial hypoxemia was cigarette smoking. Noting, however, that coal dust exposure may be synergistic or additive to cigarette smoking, Dr. Baker opined that the miner's condition was also significantly contributed to, and substantially aggravated by, his coal dust exposure. Director's Exhibit 3 at 48. In his 2015 opinion, Dr. Baker similarly stated that the miner's coal dust exposure substantially contributed to his COPD. Claimant's Exhibit 4.

Legal pneumoconiosis is defined in the regulations as any chronic lung disease or impairment arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The regulations further define "arising out of coal mine employment" to include "any chronic pulmonary disease . . . significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). Accordingly, there is no merit in employer's contention that Dr. Baker's opinion does not constitute a diagnosis of legal pneumoconiosis.

Moreover, in attributing the miner's COPD to both smoking and coal dust exposure, Dr. Baker considered that the miner started smoking at the age of eighteen and smoked at the rate of one to two packs of cigarettes per day. Director's Exhibit 3 at 48, Claimant's Exhibit 5. Dr. Baker also opined that smoking was the primary cause of the miner's COPD, and that the miner developed lung cancer, which Dr. Baker noted was listed on the death certificate as the cause of death. *Id.* Additionally, contrary to employer's contention, Dr. Baker consistently noted that fifteen years of coal mine employment had been proven, although more years of employment had been alleged. Director's Exhibit 3 at 44; Claimant's Exhibit 5. Employer has not explained how the nine month discrepancy between the fifteen years of coal mine employment relied upon by Dr. Baker and the 14.25 years found by the administrative law judge undermined the credibility of Dr. Baker's opinion. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference"). For these reasons, we reject employer's contention that the administrative law judge erred in crediting Dr. Baker's diagnosis of legal pneumoconiosis.

Employer next contends that the administrative law judge "irrationally claimed that Dr. Houser's opinion was supportive of legal pneumoconiosis." Employer's Brief at 15. Employer's argument has some merit. Although the administrative law judge correctly noted that Dr. Houser did not believe there was evidence of legal pneumoconiosis,[17] the administrative law judge mischaracterized Dr. Houser's

[17] Dr. Houser opined:

statements, by considering his calculation relating to FEV1 reduction to be a calculation relating to overall pulmonary impairment. Decision and Order at 14; Employer's Exhibit 5 at 3. However, the administrative law judge did not rely on Dr. Houser's opinion in finding legal pneumoconiosis established. Rather, he accorded the greatest weight to Dr. Baker's opinion on the basis that it was well-supported by medical literature and consistent with the preamble to the 2001 regulations, which recognizes that the effects of cigarette smoking and coal mine dust can be additive. *See* 65 Fed. Reg. 79,920, 79,940-43 (Dec. 20, 2000); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); Decision and Order at 16. Contrary to employer's contention, as discussed *supra*, Dr. Baker's opinion did diagnose legal pneumoconiosis and was creditable. As employer raises no other arguments with respect to the administrative law judge's finding that claimant established legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), it is affirmed. *See Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129.

Clinical Pneumoconiosis

We agree, however, with employer's contention that the administrative law judge erred in finding that the medical opinion evidence also established that the miner had clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

The administrative law judge began his analysis of clinical pneumoconiosis by considering eight interpretations of three x-rays dated August 28, 2009, August 6, 2010, and May 25, 2011. The administrative law judge noted that Dr. C. Meyers and Dr. Tarver, who are both dually-qualified as B readers and Board-certified radiologists, interpreted the August 28, 2009 x-ray as negative for pneumoconiosis. Employer's Exhibits 1, 2. Based on the equal and uncontradicted negative interpretations, the administrative law judge found that the 2009 x-ray is negative for pneumoconiosis. Decision and Order at 18-20. Dr. Crum, a dually-qualified radiologist, read the August 6, 2010 x-ray as positive for pneumoconiosis, whereas Dr. Seaman, a dually-qualified radiologist, read the x-ray as negative for pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 7. Because equally-qualified readers disagreed as to whether the August 6, 2010 x-ray established the existence of pneumoconiosis, the administrative law judge found this x-ray to be in equipoise. Decision and Order at 18-20. Finally, Dr.

> Although I believe there is evidence of clinical pneumoconiosis, I do not believe there is evidence of legal pneumoconiosis in [the miner's] case.

Employer's Exhibit 5 at 3.

Alexander[18] and Dr. W. Myers, who are dually-qualified radiologists, read the May 25, 2011 x-ray as positive for pneumoconiosis, whereas Dr. Tarver and Dr. C. Meyers read it as negative. Director's Exhibit 16; Claimant's Exhibit 2; Employer's Exhibits 3, 4. Based on the equal number of positive and negative readings by the dually-qualified readers, the administrative law judge found this x-ray to be in equipoise. Decision and Order at 19-20. Noting that one x-ray is negative and two x-rays are in equipoise, the administrative law judge found that the x-ray evidence failed to establish clinical pneumoconiosis. *Id*. at 20.

The administrative law judge then considered the medical opinions of Drs. Chavda, Baker, and Houser. The administrative law judge found that Drs. Chavda and Baker relied on positive readings of the May 25, 2011 x-ray to diagnose clinical pneumoconiosis, and that Dr. Houser also believed the miner had evidence of clinical pneumoconiosis. Decision and Order at 21. Finding that there are no contrary medical reports in the record, the administrative law judge concluded that clinical pneumoconiosis was established by the medical opinion evidence at 20 C.F.R. §7718.202(a)(4). *Id*.

As employer asserts, the administrative law judge's finding cannot be affirmed. Initially, we note that while Dr. W. Myers' positive reading of the May 25, 2011 x-ray was part of Dr. Chavda's DOL examination, Dr. Chavda did not diagnose clinical pneumoconiosis in his report. Director's Exhibit 16 at 38, 40. Further, in his deposition, Dr. Chavda testified that he felt the May 25, 2011 x-ray was negative for clinical pneumoconiosis, and he agreed that the x-ray evidence probably did not support a diagnosis of clinical pneumoconiosis.[19] Director's Exhibit 16 at 73. As the administrative law judge did not consider the entirety of Dr. Chavda's opinion, his determination to credit it does not comport with the APA. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165. Moreover, as employer asserts, the opinions of Drs. Houser[20] and Baker[21] appear to be

[18] The administrative law judge erroneously considered the positive reading by Dr. Ahmed, a dually-qualified radiologist, rather than the positive reading by Dr. Alexander, as designated by claimant. Decision and Order at 19-20. The error is harmless, however, as Drs. Ahmed and Alexander are equally qualified and both interpreted the x-ray as positive. *See Larioni*, 6 BLR at 1-1278; Director's Exhibit 17; Claimant's Exhibit 2.

[19] Somewhat confusingly, however, Dr. Chavda later appeared to agree that the miner's x-ray changes were due to coal dust exposure. Director's Exhibit 16 at 79.

[20] In his records review of 2012, Dr. Houser noted the positive interpretations of the August 28, 2009 and May 25, 2011 x-rays and stated that he believed there was evidence of clinical pneumoconiosis. Employer's Exhibit 5.

based solely on positive readings of x-rays that the administrative law judge found did not establish the existence of clinical pneumoconiosis.[22] Claimant's Exhibit 4; Employer's Exhibit 5. As the administrative law judge did not consider whether Drs. Houser and Baker offered reasoned and documented opinions regarding the existence of clinical pneumoconiosis, the administrative law judge's crediting of them cannot be affirmed. *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-649 (6th Cir. 2003) (administrative law judge may not rely on a doctor's opinion that a patient has medical pneumoconiosis when the physician bases his opinion entirely on x-ray evidence the administrative law judge has already discredited); *Cornett*, 227 F.3d at 576, 22 BLR at 2-120 (merely restating an x-ray does not qualify as a reasoned medical judgment); Decision and Order at 20; Claimant's Exhibit 4; Employer's Exhibit 5. Accordingly, we vacate the administrative law judge's finding that the medical opinion evidence establishes the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4). On remand, the administrative law judge must reconsider all of the medical opinions in light of their reasoning and documentation, resolve any conflicts in the evidence, and determine whether claimant has established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Total Disability

We further agree with employer's contention that the administrative law judge failed to adequately consider Dr. Baker's August 28, 2009 opinion when considering the medical opinion evidence, on the merits, pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer's Brief at 17-18.

As set forth above, in his 2009 opinion, Dr. Baker characterized the miner's impairment as mild and stated that he would have the capacity to undertake his coal mine employment. Decision and Order at 11-12, 15; Director's Exhibit 3. Dr. Baker relied, in part, on the miner's FEV1 value of 1.33, as compared to a qualifying value of 1.29 under the regulations, to conclude that the miner retained the respiratory capacity to perform his usual coal mine work. Decision and Order at 11-12, 15; Director's Exhibit 3. In contrast, in a 2011 opinion, Dr. Chavda relied, in part, on an FEV1 value of 1.32 to conclude that

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[21] In his 2015 opinion, after noting that the May 25, 2011 x-ray was read as positive by Dr. W. Myers and Dr. Ahmed, Dr. Baker stated that it was clear that the miner had coal workers' pneumoconiosis. Claimant's Exhibit 4 at 1.

[22] Neither Dr. Baker nor Dr. Houser referenced any of the negative readings of the May 25, 2011 x-ray. Claimant's Exhibit 4; Employers Exhibit 5.

the miner could not perform his usual coal mine work from a respiratory standpoint. Director's Exhibit 16. The administrative law judge accorded greater weight to Dr. Chavda's opinion because it is two years more recent than Dr. Baker's opinion and, thus, is a more accurate assessment of the miner's recent pulmonary condition. Decision and Order at 15; *see Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988), *citing Coffey v. Director, OWCP*, 5 BLR 1-404 (1982) (the evidence must address the relevant inquiry, *i.e.*, the miner's respiratory or pulmonary status at the time of the hearing).

As employer correctly asserts, however, the administrative law judge failed to consider the extent to which Dr. Baker's opinion, which relies on a similar FEV1 to Dr. Chavda's to reach an opposite conclusion about the miner's ability to work, calls into question the probative value of Dr. Chavda's 2011 opinion.[23] Employer's Brief at 17-18. As the administrative law judge failed to consider all relevant evidence, as required by the APA, we must vacate his determination that, considered on the merits, the evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv). 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165. On remand, the administrative law judge must consider employer's argument, and clearly explain his findings. *Id.*

Disability Causation

Because we have vacated the administrative law judge's finding that the miner was totally disabled at 20 C.F.R. §718.204(b)(2) and are remanding this case for the administrative law judge to reconsider that issue, we must also vacate his finding that the miner's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). To avoid any repetition of error if total disability is established, we will address employer's arguments relevant to this issue.

Employer asserts that the administrative law judge erred in relying on the opinion of Dr. Baker, as supported by the opinion of Dr. Houser, to find that the miner's total disability was due to pneumoconiosis.[24] Employer's Brief at 20. Employer argues that

[23] We note that while the administrative law judge stated that he would focus on the current claim evidence as the most probative, he added that he would address evidence submitted in an earlier claim if specifically discussed by a party. Decision and Order at 5.

[24] The administrative law judge found that Dr. Chavda gave conflicting statements regarding the etiology of the miner's disability and, therefore, discounted his opinion as equivocal. Decision and Order at 16; Director's Exhibit 16.

Dr. Baker's opinion is not credible because he did not diagnose total disability and did not appropriately consider the miner's smoking history and history of lung cancer, which, employer contends, are the true causes of any disability the miner had. Employer's Brief at 20.

Contrary to employer's argument, in his 2015 opinion, Dr. Baker considered that the miner smoked for fifteen or twenty years at a rate of up to two packs per day, and that the miner developed, and died from, metastatic lung cancer. Claimant's Exhibit 4. Further, while Dr. Baker did not specifically diagnose total disability, he did consider the miner to have some degree of disability, and offered an opinion as to its cause. Noting that recent medical articles supported the conclusion "that the inflammatory results from COPD may predispose [a person] to lung cancer," Dr. Baker concluded that "[the miner's] coal mine dust exposure was a substantial contributing cause to his COPD *and to his disability* and is likewise related to the development of lung cancer. So his coal mine dust exposure in that fashion is a substantially contributing factor to his death *and prior disability*." Claimant's Exhibit 4 (emphasis added).

We also reject employer's contention that "Dr. Baker's opinion[ ] on etiology . . . must be discounted for being contrary to the x-ray evidence that [he] relied upon." Employer's Brief at 21, *citing Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995) (a doctor's opinion as to causation may not be credited unless there are "specific and persuasive reasons" for concluding that the doctor's view on causation is independent of his mistaken belief that the miner did not have pneumoconiosis). Dr. Baker diagnosed legal pneumoconiosis, in the form of COPD due to coal mine dust exposure, consistent with the administrative law judge's finding, and opined that it contributed to his impairment. Director's Exhibit 3 at 48; Claimant's Exhibit 4. Thus, employer has not explained how Dr. Baker's opinion that the miner also had clinical pneumoconiosis undermined the probative value of his opinion relevant to disability causation. *See Shinseki,* 556 U.S. at 413; Claimant's Exhibit 4. Employer raises no other allegations of error with respect to Dr. Baker's opinion. We therefore reject employer's contention that the administrative law judge erred in crediting Dr. Baker's opinion in finding disability causation established at 20 C.F.R. §718.204(c).

We find merit, however, in employer's contention that the administrative law judge erred in finding that Dr. Houser's opinion was "was supportive of Dr. Baker's" opinion. Decision and Order at 17; Employer's Brief at 20. As employer asserts, while Dr. Houser attributed a reduction in the miner's FEV1 values to coal dust exposure, he specifically stated that "pneumoconiosis was not a substantial contributing factor to [the miner's] respiratory impairment prior to his death." Employer's Exhibit 5. In light of this statement, the administrative law judge has not explained how Dr. Houser's opinion supports the conclusion that the miner was totally disabled due to pneumoconiosis,

pursuant to 20 C.F.R. §718.204(c). *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

In sum, if total disability is established on remand, the administrative law judge must determine whether claimant has also established that pneumoconiosis, whether legal or clinical, was a substantially contributing cause of the miner's totally disabling respiratory impairment, and explain his findings. 20 C.F.R. §718.204(c); *see Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 599, 25 BLR 2-615, 2-624 (6th Cir. 2014); *Island Creek Coal Co. v. Calloway*, 460 Fed. Appx. 504, 512-13 (6th Cir. 2012).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge