BRB No. 08-0692 BLA

S.M.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 07/30/2009
	)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Cheryl Catherine Cowen, Waynesburg, Pennsylvania, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2007-BLA-5181) of Administrative Law Judge Thomas M. Burke on a claim filed on April 12, 2005, 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 credited claimant with at least twenty-eight years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the x-ray evidence was negative for pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), that the record does not contain any biopsy evidence under 20 C.F.R. §718.202(a)(2), and that the presumptions described at 20 C.F.R. §718.202(a)(3) are not applicable. The administrative law judge further found,

however, that the medical reports supported a finding of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and that, weighing all the evidence together, claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that the evidence established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis and disability causation pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c). Employer also alleges that the administrative law judge failed to render a finding as to whether claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[1]

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.[2] 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).

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

[1] The administrative law judge's findings that claimant had at least twenty-eight years of coal mine employment, that the evidence did not establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(1)-(3), and that the evidence established total disability pursuant to 20 C.F.R. §718.204(b), are affirmed as unchallenged by the parties on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[2] The record indicates that claimant's coal mine employment was in Pennsylvania. Director's Exhibits 4, 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Celko, Fino, Cohen, Basheda and Rasmussen. Dr. Celko examined claimant on October 17, 2005, at the request of the Department of Labor. Director's Exhibit 13. Dr. Celko diagnosed a severe obstructive pulmonary impairment caused by coal dust exposure and cigarette smoking and stated that he could not separate the effects of the two causal agents. *Id*. In a subsequent letter, Dr. Celko indicated that claimant's smoking and his exposure to coal dust were roughly equivalent and both constituted significant causative factors in claimant's chronic obstructive pulmonary disease (COPD). Director's Exhibit 17. At his deposition, Dr. Celko acknowledged that claimant's pulmonary function study results were consistent with disease caused by cigarette smoking and reiterated his conclusion that claimant's COPD was caused by both smoking and coal dust exposure. Employer's Exhibit 1 at 16, 19-20.

Dr. Fino examined claimant on June 22, 2006 and diagnosed a totally disabling obstructive impairment due to COPD, chronic bronchitis and emphysema. Director's Exhibit 19. Dr. Fino stated that he could distinguish between the effects of smoking and coal dust exposure and that claimant's lung disease was attributable to smoking. *Id*. In support of his opinion, Dr. Fino noted that there was no evidence of above-average dust retention in claimant's lungs and cited studies showing that the extent of coal workers' pneumoconiosis in the lungs correlates to the amount of obstruction. *Id*. Dr. Fino further indicated that the average FEV1 loss caused by coal dust exposure does not result in clinically significant obstruction. *Id*. At his deposition, Dr. Fino reiterated his conclusions and stated that he identified smoking as the sole cause of claimant's lung disease based upon a negative x-ray, claimant's low diffusion capacity, the partial reversibility of his impairment and the low FEV1 to FVC ratio. Employer's Exhibit 11 at 22.

Dr. Cohen examined claimant on June 28, 2006 and diagnosed coal workers' pneumoconiosis and severe obstructive lung disease. Claimant's Exhibit 1. Dr. Cohen indicated that claimant's obstructive lung disease was caused by smoking and coal dust exposure. *Id*. In support of his opinion, Dr. Cohen cited several medical studies describing a connection between the inhalation of coal dust and the development of an obstructive impairment. *Id*. Dr. Cohen stated in his deposition that, although he is unable to distinguish between the effects of smoking and coal dust exposure, he relies upon the relative exposure histories to reach his conclusion. Employer's Exhibit 10 at 31. Dr. Cohen determined that the severity of claimant's obstructive impairment indicated that he is more susceptible than the average individual to the effects of coal dust inhalation and cigarette smoke. *Id*. at 33-34, 36.

Dr. Basheda examined claimant on May 7, 2007 and diagnosed COPD, with an asthmatic component, caused by smoking. Employer's Exhibit 4. Dr. Basheda stated that claimant's COPD was related to smoking, as "the small loss of FEV1 that can occur

from coal dust exposure would not result in the aforementioned loss of lung function, progressive obstruction and disability." *Id*.

Dr. Rasmussen reviewed claimant's medical records and determined that claimant has COPD caused by a combination of smoking and coal dust exposure in a report dated July 24, 2007. Claimant's Exhibit 6. Dr. Rasmussen also cited medical literature indicating that coal dust can cause obstructive lung disease and that a definite relationship between pneumoconiosis on x-ray and COPD from coal dust exposure does not exist. *Id*. At his deposition, Dr. Rasmussen stated that it is not possible to distinguish between the effects of coal dust exposure and smoking. Employer's Exhibit 12 at 18.

The administrative law judge considered these medical opinions pursuant to Section 718.202(a)(4) and found that Drs. Celko, Cohen, and Rasmussen attributed claimant's COPD to a combination of smoking and coal dust inhalation, while Drs. Fino and Basheda stated that claimant's COPD was caused solely by smoking. Decision and Order at 8. The administrative law judge further stated that, in addition to being Board-certified in pulmonary medicine, Drs. Cohen and Rasmussen have "a particular expertise in black lung disease," based upon their publications, academic positions, and their service on committees specifically related to black lung disease. *Id*. at 9, 10. Regarding the opinion of Dr. Fino, the administrative law judge noted that he relied, in part, upon his views that a miner must have x-ray evidence of coal dust retention in the lungs before he would attribute any impairment to coal dust exposure and that coal dust exposure does not cause clinically significant obstruction. *Id*. at 10-11. With respect to Dr. Basheda's opinion, the administrative law judge indicated that he gave it less weight because the doctor did not identify the studies that he relied upon to identify smoking as the sole cause of claimant's COPD. *Id*. at 11-12. The administrative law judge concluded:

> The reports of Drs. Fino and Basheda, finding that [c]laimant's pulmonary impairment is caused exclusively by cigarette smoking without any significant contribution from coal dust exposure, are given less credit than the opposite opinions of Drs. Cohen and Rasmussen because Dr. Cohen's report and testimony recognize the effect of coal dust exposure on a sensitive or susceptible individual such as [c]laimant, whereas Dr. Fino's and Dr. Basheda's reasoning compares the typical effects of coal dust to [c]laimant's condition. Dr. Fino has excellent credentials to render an opinion as he is Board-certified in internal medicine and the subspecialty of pulmonary medicine, has been practicing in the area of pulmonary medicine since 1980, and teaches at the University of Pittsburgh in the pulmonary disease division. Dr. Basheda is also Board-certified in internal, pulmonary, and critical care medicine. However, the qualifications of Drs. Cohen and Rasmussen to offer an opinion on the effects of coal dust exposure relative to cigarette smoking on [c]laimant's pulmonary condition

> are considered superior to those of Drs. Fino and Basheda because of their greater expertise in the area of black lung disease.

Id. at 12. The administrative law judge determined, therefore, that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). *Id*.

Employer contends that the administrative law judge erred in failing to consider whether Dr. Cohen's diagnosis of coal workers' pneumoconiosis, based upon a positive x-ray reading, which is contrary to the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis, detracted from the credibility of his diagnosis of legal pneumoconiosis. Employer also argues that the administrative law judge did not address the fact that Dr. Cohen "offered no specifics on the amount of coal dust exposure [claimant] experienced, thus lessening the potential persuasiveness of his opinion." Employer's Brief at 8. Employer further maintains that there is no basis for Dr. Cohen's conclusion that claimant was more susceptible than the average person to the effects of coal dust exposure. Employer additionally contends that the administrative law judge should have discredited Dr. Cohen's opinion because, unlike the other physicians of record, he did not diagnose emphysema and he did not address the reversibility of claimant's obstructive impairment or the significance of the decrease in claimant's FEV1/FVC ratio. Employer also argues that the administrative law judge erred in finding that Dr. Cohen's expertise in black lung disease was superior to that of Dr. Fino, in light of the fact that Dr. Fino examines more miners than Dr. Cohen. Lastly, employer asserts that the administrative law judge failed to consider whether claimant met his burden of proving that his pneumoconiosis arose out of coal mine employment under Section 718.203(b).[3]

Employer's contentions are without merit. With respect to Dr. Cohen's reliance on a positive x-ray reading in rendering his diagnosis of pneumoconiosis, the definition of the disease set forth in 20 C.F.R. §718.201(a) recognizes two forms of pneumoconiosis. Pursuant to Section 718.201(a)(1):

> "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is

[3] We reject employer's argument that the administrative law judge erred in failing to indicate what weight, if any, he accorded to Dr. Celko's opinion, as the administrative law judge determined that Dr. Celko's opinion corroborated the opinion of Dr. Cohen. Decision and Order at 10.

> 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). Under Section 718.201(a)(2), legal pneumoconiosis is defined as "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The term "arising out of coal mine employment" denotes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). In his report, Dr. Cohen cited a positive x-ray reading in support of his diagnosis of "coal workers' pneumoconiosis," but he also diagnosed severe obstructive pulmonary disease caused, in part, by coal dust exposure and noted that "if for some reason the chest images were judged to be negative for the presence of pneumoconiosis, it would not change my opinion that [claimant] has physiologic evidence of the disease." Claimant's Exhibit 1. Because Dr. Cohen rendered a diagnosis that falls within the terms of the definition of legal pneumoconiosis, that was independent of his diagnosis of coal workers' pneumoconiosis, based upon a positive chest x-ray reading, the administrative law judge was not required to discredit Dr. Cohen's diagnosis of legal pneumoconiosis. 20 C.F.R. §§718.201(a), 718.202(a)(4); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

We also hold that the administrative law judge properly found that Dr. Cohen's diagnosis of a severe obstructive impairment caused, in part, by coal dust exposure, was documented by: (1) his findings on examination; (2) claimant's thirty-eight pack year smoking history and twenty-eight years of coal mine employment; (3) claimant's symptoms, including, dyspnea, cough, and wheezing; (4) the results of the pulmonary function tests; and (5) the medical literature. Decision and Order at 5, 12; Claimant's Exhibit 1; 20 C.F.R. §§718.202(a)(4), 718.201(a)(2); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). Contrary to employer's assertion, in his report dated June 28, 2006, Dr. Cohen documented claimant's coal mine dust exposure as follows:

> 1970-1980: Consolidation Coal, Montour #4 mine. He worked as a general inside laborer. This mine used conventional mining technology. Coal was mined by drilling and blasting by use of compressed air shells. This was underground shaft mine with seam at depths of 500 feet and seam heights of approximately 6 feet. He worked laying track, applying rock dust, as a wireman, and as a roof bolter.
>
> 1980-1981: J&L Mine as a general inside laborer. Patient was primarily responsible for working in high coal seam, applying rock dust, laying tracks and roof bolting.

> 1984-2002: Consolidation Coal Company, McMurry, Pennsylvania. Mr. [S.M.] was employed as a general preventive maintenance worker. This was a shift mine with seams 300-500 feet below ground which were 6 feet in height. He was required to lay track, roof bolt and drill often times at the face of the mine. His most recent job assignment was performing general inside labor and preventive maintenance. His most strenuous task at this time was laying track, which consisted of laying 85 pound railroad ties and carrying each tie for a length of 90 to 100 feet approximately 72 to 100 times per day. This was required every 3 days out of the work week. His position also required him to perform roof bolting approximately 2-3 times per week. He also had to mount local dust exhaust ventilation tubes overhead.
>
> He reports that he did not wear a respirator while working in the coal mines.

Claimant's Exhibit 1. Dr. Cohen further testified at his deposition that claimant had a few years in which he was exposed to intermediate dust levels because he started working in 1970 and the legislation requiring greater dust abatement went fully into effect in 1973. Employer's Exhibit 1 at 26. Regarding whether he knew the specific amount of dust claimant inhaled, Dr. Cohen explained that he did not have monitoring data from any of those mines, but he knew the types of job descriptions and, based on claimant's job description, claimant's exposure was significant.[4] *Id.*

Employer's assertion that Dr. Cohen failed to address the significance of the reversibility of claimant's obstructive impairment is also without merit. In his report, Dr. Cohen stated that claimant had a significant response to bronchodilators, but that his FEV1 "never reversed to normal or near normal, and remained moderately severely impaired." Claimant's Exhibit 1. Similarly, the administrative law judge was not required to discredit Dr. Cohen's opinion because, unlike the other physicians of record,

[4] Like Dr. Cohen, Dr. Fino testified that he based his understanding of claimant's exposure to coal dust on "histories, which is how all studies and how doctors have practiced for decades." Employer's Exhibit 1 at 33. In addition, Dr. Fino agreed that claimant had sufficient cigarette smoking history and coal dust exposure history to place him at risk from both agents, if susceptible. Employer's Exhibit 11. Although Dr. Basheda reported that claimant's dust exposure rated between three to six on a scale of one to ten, Employer's Exhibit 4, Dr. Rasmussen opined that because there are no objective measurements of either the amount of smoke delivered to claimant's lungs or the amount of coal dust inhaled by claimant, it is "impossible to accurately quantify the cause and effect relationship." Claimant's Exhibit 6.

he did not diagnose emphysema. The central issue in this case is whether coal dust exposure is a significant or substantial cause of claimant's COPD, a distinct condition that was diagnosed by Drs. Cohen, Fino, Celko, Rasmussen and Basheda. Director's Exhibits 13, 19; Claimant's Exhibits 1, 6; Employer's Exhibits 4, 10-12.

In addition, contrary to employer's argument, the administrative law judge's decision to accord greater weight to Dr. Cohen's opinion because he "recognized the effect of coal dust exposure on a sensitive or susceptible individual," is supported by substantial evidence. Decision and Order at 12. The administrative law judge acted within his discretion as fact-finder in relying on Dr. Cohen's testimony that claimant lost approximately half of what his FEV1 should be for a miner of his age and height, which supported a determination that claimant is more susceptible than the average individual to the damaging effects of coal dust inhalation and smoking. Decision and Order at 7, *citing* Employer's Exhibit 10 at 33-34, 36; *see Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985). As the administrative law judge noted, Dr. Cohen further explained that the studies showing that smoking and coal dust exposure cause relatively minor decreases in FEV1 and FEV1/FVC ratio are based on averages that mask individual cases in which the decreases are significant. Decision and Order at 9; Employer's Exhibit 10 at 35-36. Dr. Cohen stated, in response to a question regarding a 1995 study published by the National Institute for Occupational Safety and Health, which described losses in the FEV1/FVC ratio due to smoking that were small in magnitude:

> [A]veraged over the whole population, the fall in ratio was correlated with coal mine dust exposure but was small. And again, [claimant] is not someone that's the average person in this population because the average miner doesn't get severe COPD. He's sensitive and his ratio fell more and his FEV1 fell more.

Employer's Exhibit 10 at 35-36.

Employer is incorrect in suggesting that Dr. Cohen's opinion is unreasoned because he testified that there is no way to distinguish physiologically between an impairment caused by coal dust exposure and an impairment caused by smoking. The Department of Labor and several of the United States Courts of Appeals have indicated that a physician's statement that he cannot distinguish between the effects of smoking and coal dust exposure does not, by itself, render unreasoned a physician's identification of coal dust exposure as a contributing cause of a miner's pulmonary impairment. *See* 65 Fed. Reg. 79946 (Dec. 20, 2000); *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 372 (4th Cir. 2006); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 482, 22 BLR 2-265, 2-280 (7th Cir. 2001); *Cornett v. Benham Coal, Inc.*, 227

F.3d 569, 577, 22 BLR 2-107, 2-122 (6th Cir. 2000); *see also Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2004) (a medical opinion that pneumoconiosis "was one of two causes" of total disability met the "substantially contributing cause" standard at 20 C.F.R. §718.204(c)).

In addition, the administrative law judge rationally determined that Dr. Cohen's opinion was entitled to greater weight than the contrary opinions of Drs. Fino and Basheda, based upon Dr. Cohen's superior qualifications. The administrative law judge acted within his discretion in finding that Dr. Cohen's role as a consultant to several organizations and authorship of articles on the specific subject of pneumoconiosis indicated that he had "greater expertise in the area of black lung disease."[5] Decision and Order at 12; Claimant's Exhibit 1; *see Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(*en banc*); *Dillon*, 11 BLR at 1-114; *Wetzel*, 8 BLR at 1-141. Because it is rational and supported by substantial evidence, we affirm the administrative law judge's finding that Dr. Cohen's diagnosis of legal pneumoconiosis was reasoned, documented, and entitled to great weight. *See Clark*, 12 BLR at 1-155; *Dillon*, 11 BLR at 1-114; *Wetzel*, 8 BLR at 1-141.

Employer next alleges that the administrative law judge erred in discrediting Dr. Fino's opinion, based on the preamble to the January 19, 2001 amendments to the regulations set forth in Part 718. Employer argues that the administrative law judge failed to address the scientific grounds by which Drs. Fino and Basheda were able to exclude any significant contribution by coal dust to claimant's lung impairment. We disagree. The administrative law judge found that Dr. Fino opined that there is a direct positive correlation between the amount of coal dust retained in the lungs and the amount of obstruction. Decision and Order at 10, *citing* Employer's Exhibit 11 at 12. The administrative law judge found that Dr. Fino testified that he would need to read an x-ray as 1/1 before he would find that coal dust was "causing a problem." *Id.* The administrative law judge found that Dr. Fino did not reference any source for his opinion

[5] The administrative law judge accurately noted that a review of Dr. Cohen's curriculum vitae indicates that he is a consultant with the Department of Health and Human Services' Mine Safety and Health Research Advisory Committee for the Centers for Disease Control and Prevention, consultant with the Department of Health and Human Services' Bureau of Primary Health Care, Medical Director of the Black Lung Clinics Program, a consultant on coal miners' health with the United States Agency on International Development, and a consultant on coal workers' lung diseases for the United Mine Workers of America. Decision and Order at 9; Claimant's Exhibit 1. The administrative law judge also stated correctly that Dr. Cohen's curriculum vitae reveals that he has published articles in medical journals on black lung disease and has lectured extensively on the subject. *Id.*

that a positive x-ray is necessary for a finding of disabling legal pneumoconiosis and, therefore, rationally rejected his opinion as inconsistent with the amended definition of pneumoconiosis, which specifically recognizes the possibility of the existence of disabling pneumoconiosis without x-ray evidence of coal dust deposition. Decision and Order at 11; *see* 20 C.F.R. §§718.202(a)(4), 718.201(a)(2); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-467, 481 (3d Cir. 2002); *see also Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-281 n.7 (7th Cir. 2001).

The administrative law judge also acted within his discretion in according less weight to the opinion of Dr. Basheda. The administrative law judge found that Dr. Basheda "relies almost exclusively on the values derived from 'numerous studies'. . . ," but failed to indicate from which studies he drew the values cited. Decision and Order at 11, *quoting* Employer's Exhibit 4. Thus, the administrative law judge rationally found that the opinion of Dr. Basheda is not reasoned and accorded his opinion little weight. Decision and Order at 12; *Clark*, 12 BLR at 1-155. We hold, therefore, that the administrative law judge acted within his discretion in discrediting the opinions in which Drs. Fino and Basheda ruled out any causal connection between claimant's totally disabling obstructive impairment and coal dust exposure. Accordingly, we affirm the administrative law judge's finding that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4).

Employer next contends that the administrative law judge did not address pneumoconiosis causation under Section 718.203(b) and erred in finding that the evidence established total disability due to pneumoconiosis under Section 718.204(c). The administrative law judge stated that because "[c]laimant has established that his totally and permanently disabling COPD is due to pneumoconiosis, he has shown that he is entitled to benefits under the Act." Decision and Order at 13. Although employer is correct in asserting that the administrative law judge did not render a separate finding under Section 718.203(b), this does not constitute error requiring remand, as a finding that claimant's pneumoconiosis arose out of coal mine employment was subsumed in the administrative law judge's finding that claimant proved that his obstructive impairment was significantly related to dust exposure in coal mine employment pursuant to Section 718.202(a)(4). 20 C.F.R. §§718.201(a)(2), 718.202(a)(4), 718.203(b); *see Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Similarly, in rationally determining that claimant proved the existence of legal pneumoconiosis under Section 718.202(a)(4), the administrative law judge fully resolved in claimant's favor the issue of whether the medical opinion evidence was sufficient to establish that claimant's obstructive impairment was significantly related to dust

exposure in coal mine employment. Decision and Order at 8-12. We have affirmed, as unchallenged on appeal, the administrative law judge's determination that claimant established that his impairment is totally disabling at Section 718.204(b)(2). *Slip op.* at 2 n.1. The findings that the administrative law judge rendered under Sections 718.202(a)(4) and 718.204(b)(2) accord, therefore, with a determination that claimant met his burden of establishing that pneumoconiosis, as defined in Section 718.201(a)(2), was a substantially contributing cause of his total disability pursuant to Section 718.204(c). 20 C.F.R. §718.204(c); *see Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989). Thus, we affirm the administrative law judge's finding that claimant met his burden of proof under Section 718.204(c). Decision and Order at 13.

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge