BRB No. 10-0602 BLA

THERESA FLANNERY (On Behalf of MICHAEL FLANNERY) Claimant-Respondent v. BRENDA COAL COMPANY and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/29/2011 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of William S. Colwell, Administrative Law Judge, United States Department of Labor.

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

Jeffrey S. Goldberg (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits on Remand (2006-BLA-0595) of Administrative Law Judge William S. Colwell, rendered on a claim filed on April 23, 2003, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act).[1] This case is before the Board for a second time.[2] In a Decision and Order issued on October 9, 2007, Chief Administrative Law Judge John M. Vittone credited the miner with ten years of coal mine employment, based on the parties' stipulation, and adjudicated this claim under the regulations at 20 C.F.R. Part 718. Judge Vittone found that claimant established the existence of both clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1),(4), and that employer did not rebut the presumption, set forth in 20 C.F.R. §718.203(b), that the miner's clinical pneumoconiosis arose out of coal mine employment. He accepted the parties' stipulation that the miner was totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), and found that the evidence was sufficient to establish that the miner's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, benefits were awarded.

Employer appealed and the Board held that Judge Vittone erred in failing to explain his apparent exclusion of interpretations by Drs. Vaezy and Repsher of an x-ray dated January 10, 2007, from consideration at 20 C.F.R. §718.202(a)(1). *M.F.* [*Flannery*] *v. Brenda Coal, Inc.*, BRB No. 08-0153 BLA, slip. op. at 3 (Oct. 30, 2008) (unpub). Thus, the Board vacated the award of benefits and remanded the case for clarification of the admissibility of the readings by Dr. Vaezy and Dr. Repsher, in accordance with the evidentiary limitations at 20 C.F.R. §725.414, and for Judge Vittone to render, as necessary, new findings at 20 C.F.R. §718.202(a)(1). *Id*. at 4. Pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c), the Board agreed with employer that Judge Vittone had not explained the basis for his credibility determinations and remanded the case for further consideration of the issues of the existence of pneumoconiosis and disability causation. *Id*. at 4-8. Additionally, the Board instructed Judge Vittone to determine whether the CT scan readings rendered by Drs. Vaezy and Repsher during their post-hearing depositions were admissible. *Id*. at 8.

On remand, the case was reassigned to Judge Colwell (the administrative law judge) due to the retirement of Judge Vittone. On May 6, 2010, the administrative law

[1] Based on the filing date of the miner's claim, this case is not impacted by the recent amendments to the Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010.

[2] The miner died on May 30, 2008, while the case was pending before the Board in the prior appeal. Claimant, the miner's surviving spouse, is pursuing the miner's claim on his behalf.

judge issued an Order on Admission of Evidence and Setting Deadline for Closing of Arguments, wherein he admitted Dr. Vaezy's interpretation of the January 10, 2007 x-ray, but excluded Dr. Repsher's reading of that same film, on the ground that it exceeded the evidentiary limitations. The administrative law judge admitted, as evidence on remand, the January 2003 CT scan interpretations by Drs. Vaezy and Repsher. In his Decision and Order Awarding Benefits on Remand dated July 6, 2010, the administrative law judge conducted a *de novo* review of the record and found that claimant established the existence of clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203. Giving controlling weight to the opinion of Dr. Vaezy, the administrative law judge also found that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and that the miner's totally disabling respiratory impairment was due to both clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Thus, benefits were awarded.

In this appeal, employer asserts that the administrative law judge erred in failing to consider whether there was good cause for the admission of Dr. Repsher's x-ray reading, in excess of the evidentiary limitations. In the alternative, employer argues that it should have been permitted to substitute affirmative readings on remand in order to comply with 20 C.F.R. §725.414. On the merits, employer challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1),(4), and 718.204(c). Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, agreeing with employer that the administrative law judge erred in failing to consider whether employer established good cause for the admission of Dr. Repsher's x-ray reading. The Director, however, urges the Board to reject employer's alternative argument, as employer did not request the opportunity to redesignate its affirmative evidence while the case was before the administrative law judge. The Director does not address any of employer's remaining arguments on the merits of claimant's entitlement.

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.[3] 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).

Based on our review of the administrative law judge's Decision and Order on Remand, the evidence of record and the briefs of the parties on appeal, we conclude that

[3] 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 (1989) (*en banc*).

substantial evidence supports an award of benefits in this claim, based on the administrative law judge's finding that the evidence was sufficient to establish that the miner was totally disabled due to *legal* pneumoconiosis.[4] As discussed, *infra*, because we affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(4), (c), it is not necessary to address employer's assertions that the administrative law judge erred in his evidentiary rulings, as to the admissibility of Dr. Repsher's x-ray reading, and the weighing of the x-ray evidence for clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1).

I. LEGAL PNEUMOCONIOSIS

Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge noted that "all of the medical experts agree that the miner suffered from chronic obstructive pulmonary disease (COPD)," although they disagree as to the etiology of that condition. Decision and Order on Remand at 12. Drs. Repsher and Dahhan conclude that the miner's COPD was due entirely to smoking, while Dr. Vaezy opined that the miner's COPD was due to smoking but also, in part, to his coal dust exposure.[5] Director's Exhibit 14; Claimant's Exhibits 3, 4; Employer's Exhibits 1, 6, 7. The administrative law judge rejected the opinions of Drs. Repsher and Dahhan, finding that they were insufficiently reasoned. In contrast, the administrative law judge found that Dr. Vaezy specifically diagnosed legal pneumoconiosis and that his opinion was reasoned and documented and deserving of credit.

We reject employer's contention that the administrative law judge erred in finding Dr. Repsher's opinion to be insufficiently reasoned. As noted by the administrative law judge, Dr. Repsher conducted a medical record review and issued a report dated

[4] "Legal pneumoconiosis" is defined in 20 C.F.R. §718.201(a)(2) as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). Pursuant to 20 C.F.R. §718.201(b), a disease "arising out of coal mine employment" refers to "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).

[5] The administrative law judge also considered Dr. Baker's opinion, that the miner's coal dust exposure "may have" contributed to his chronic obstructive pulmonary disease (COPD), but found Dr. Baker's opinion to be equivocal and insufficient to establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). Director's Exhibit 36; *see* Decision and Order on Remand at 15.

September 25, 2005. Employer's Exhibit 4. He reported a coal mine employment history of ten to eleven years and a forty pack-year history of smoking. He noted that the miner's pulmonary function tests showed severe COPD that "is fully accounted for by [his] long, heavy, and continued smoking addiction." *Id.* Dr. Repsher noted that smoking is the most common cause for COPD and explained his rationale for excluding coal dust exposure as a factor in the miner's COPD as follows:

> The majority of coal miners exposed to coal mine dust . . . may also develop COPD. However, on the average, non-smoking and non-asthmatic coal miners with 0/0 through 3/3 simple CWP will have normal pulmonary function, including a normal diffusing capacity. Further, the average loss of FEV1 is so small, that it is not detectable in an individual miner.

Id. Dr. Repsher attached six medical articles to his report to support his conclusion that "it would be very unlikely" for coal dust exposure to have contributed to the miner's disabling obstructive respiratory condition. *Id*.

The administrative law judge observed correctly that Dr. Repsher's opinion "is premised on views that (1) coal dust exposure does not, standing alone, generally result in a significant reduction in ventilatory capacity, and (2) development of COPD in coal miners is rare." Decision and Order on Remand at 12. The administrative law judge properly found that Dr. Repsher's opinion is contrary to the science relied upon by the Department of Labor (DOL), which shows "a clear relationship between coal dust exposure and a decline in pulmonary function of about 5 to 9 millimeters a year, even in miners with no radiographic evidence of clinical coal workers' pneumoconiosis." Decision and Order on Remand at 12-13, *citing* 65 Fed. Reg. 79,940 (Dec. 20, 2000); *see 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). Furthermore, the administrative law judge properly found that, while Dr. Repsher suggested that it was rare for a miner to develop coal dust induced COPD, in the absence of a smoking history, "Dr. Repsher fails to explain why the miner could not be one of those 'rare' individuals who developed disabling pneumoconiosis as a result of his exposure to coal mine dust." Decision and Order on Remand at 14; *see Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008).

An administrative law judge may properly discount a doctor's opinion based on medical science that the DOL has determined is not "in accord with the prevailing view of the medical community or the substantial weight of the medical and scientific literature." *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *see also Summers*, 272 F.3d at 483 n.7; 22 BLR at 2-281 n.7. Furthermore, the United States Court of Appeals for the Sixth Circuit has repeatedly held that it is for the administrative law judge, as the fact-finder, to decide whether a physician's medical

opinion is sufficiently documented and reasoned, because such a determination is essentially a credibility matter within the purview of the administrative law judge. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-513 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 835, 22 BLR 2-320, 2-325 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Because the administrative law judge rationally explained why he found Dr. Repsher's opinion to be insufficiently reasoned as to the etiology of the miner's COPD, we affirm the administrative law judge's decision to accord Dr. Repsher's opinion less weight as to the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).[6] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-161 (1988); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*).

We also reject employer's assertion that the administrative law judge erred in his consideration of Dr. Dahhan's opinion. Dr. Dahhan examined the miner on February 24, 2004, and noted ten years of coal mine employment and a 30-pack-year history of smoking. Employer's Exhibit 1. A pulmonary function test showed a "severe, partially reversible obstructive ventilatory defect," although the post-bronchodilator values remained qualifying for total disability under the regulations. *Id*. Dr. Dahhan concluded that the miner suffered from COPD that "is responsive to bronchodilator therapy, a finding that is inconsistent with the permanent adverse [e]ffects of coal dust on the respiratory system." *Id*. Dr. Dahhan noted that the miner's treating physician, Dr. Vaezy, had also prescribed bronchodilator therapy, which Dr. Dahhan believed to be "another finding that is inconsistent" with impairment due to coal dust exposure. *Id*.

In weighing Dr. Dahhan's opinion, the administrative law judge observed that, while pneumoconiosis is a progressive and irreversible disease, "such that improvement based on bronchodilator therapy, or through the use of certain prescribed medications, would tend to militate against a finding of the presence of the disease in this claim," Dr. Dahhan's opinion was less persuasive as he "did not address [whether] the irreversible component of the miner's lung disease" was consistent with exposure to coal dust. Decision and Order on Remand at 14. Citing *Consolidation Coal Co. v. Swiger*, 98 F.

[6] Employer contends that the administrative law judge erred when he "faulted Dr. Repsher for failing to explain why [the miner] was not uniquely sensitive [to coal dust exposure] when the treatment records contain no notations that the miner had a sensitivity to irritants." Employer's Brief in Support of Petition for Review at 23. The administrative law judge, however, permissibly relied upon statements by Dr. Vaezy indicating that the miner had advanced stage of COPD at an early age and his testimony that the miner was "sensitive" to dust exposures. Decision and Order on Remand at 19; Employer's Exhibit 7; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (*en banc*).

App'x. 227, 237 (4th Cir. May 11, 2004), the administrative law judge observed that the reversibility of the values on pulmonary function testing, after the use of a bronchodilator, does not necessarily preclude the presence of a coal-dust related disease. *Id*. at 14-15. The administrative law judge noted that, because the miner's post-bronchodilator values were qualifying for disability and "Dr. Dahhan's opinion does not address the possible causes of the disabling irreversible component," Dr. Dahhan's opinion was entitled to little weight in his consideration of whether claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). *Id*. at 15.

We reject employer's assertion that the administrative law judge did not follow the Board's instruction to explain the weight accorded Dr. Dahhan's opinion. The administrative law judge permissibly found that Dr. Dahhan's opinion was less probative, as he failed to adequately explain why the miner's responsiveness to treatment with bronchodiloators necessarily eliminated a finding of legal pneumoconiosis. *See Crockett Colleries, Inc. v. Director, OWCP [Barrett]*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); Decision and Order on Remand at 15. Because the administrative law judge has discretion to assign less weight to a medical opinion that he finds is not sufficiently explained, we affirm his decision to give Dr. Dahhan's opinion less weight at 20 C.F.R. §718.202(a)(4) and reject employer's arguments. *See Wojtowicz,* 12 BLR at 1-165; *Clark*, 12 BLR at 1-151.

With regard to Dr. Vaezy's opinion, employer asserts that it is legally insufficient to satisfy claimant's burden to prove the existence of legal pneumoconiosis. We disagree. As noted by the administrative law judge, Dr. Vaezy began treating the miner in 2003 and issued a report dated October 25, 2005 diagnosing, *inter alia*, a moderate obstructive respiratory impairment, based on the results of a pulmonary function test, which Dr. Vaezy attributed to the miner's smoking and ten year history of coal dust exposure. Claimant's Exhibit 3. On January 30, 2007, Dr. Vaezy issued a supplemental report, stating that the miner suffered from "severe COPD" to the point he was on a list for a lung transplant. Claimant's Exhibit 4. He noted that claimant had symptoms of chronic bronchitis, cough, sputum production, wheezing and shortness of breath, and that "[w]ith his history of coal dust exposure, this would be legal pneumoconiosis." *Id.* Dr. Vaezy concluded that the miner's severe respiratory impairment was due to coal dust exposure and smoking, indicating that it was impossible to separate the contribution of coal dust to the miner's disabling COPD. *Id*.

During a deposition conducted on February 1, 2007, Dr. Vaezy testified that smoking was the main reason for the miner's respiratory impairment, but that coal dust was also a factor:

> [C]oal dust exposure for this particular person that for some reason is so sensitive to any dust or any irritation didn't help it. You know, what I'm

> saying is that you can't separate those . . . you can't tell whether ten percent of it is, you know, coal dust related or whatever it is, but there's no doubt that any coal dust that he was exposed to hurt him too, and wasn't helpful to his chronic inflammation and chronic bronchitis.

Employer's Exhibit 7 at 19. Dr. Vaezy further testified that he was unable to assign a percentage to the extent to which coal dust exposure contributed to the miner's COPD but "saying absolutely there is no contribution from coal dust to me is impossible." *Id*. at 28.

Contrary to employer's argument, it was not necessary for Dr. Vaezy to distinguish between the effects of smoking and coal dust exposure, and give the exact percentage to the extent to which coal dust exposure contributed to the miner's COPD, in order for his opinion to support a finding of legal pneumoconiosis. The DOL and the Sixth Circuit 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. 79,946 (Dec. 20, 2000); *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). The administrative law judge properly found that Dr. Vaezy's October 25, 2005 and January 30, 2007 reports, stating that the miner's obstructive respiratory impairment was due, in part, to his coal dust exposure, is sufficient to support a finding of legal pneumoconiosis. Decision and Order on Remand at 15; Claimant's Exhibits 3, 4.

We also specifically reject employer's assertion that the administrative law judge erred in failing to consider whether Dr. Vaezy's deposition testimony contradicted his written reports. The administrative law judge noted that, "[d]uring Dr. Veazy's [sic] deposition, [e]mployer's counsel stressed the lack of dusty conditions under which the miner worked" when questioning Dr. Vaezy as to the degree to which he believed coal dust contributed to the miner's COPD. Decision and Order on Remand, *citing* Employer's Exhibit 7 at 16-18, 27. Because the administrative law judge found that employer's "portrayal of the miner's level of exposure to dust" was inconsistent with the miner's hearing testimony, that he worked under "very dusty" conditions,[7] the

[7] As noted by the administrative law judge, employer's counsel asked Dr. Vaezy on cross examination: "[I]f in fact [the miner] was only exposed on the surface for about ten years (10) years, maybe a little bit less, and during almost all of that time he was operating a bull dozer with an enclosed cab, would it be even less likely that he would contract pneumoconiosis." Employer's Exhibit 7 at 16-17. Dr. Vaezy responded, "That's correct." *Id*. at 17. The administrative law judge, however, found that the miner's testimony was credible and consistent that, although he worked in the cab of a dozer, the conditions were "very dusty" and the windows were not always closed.

administrative law judge reasonably decided to "accord less weight to Dr. Vaezy's testimony than to his written reports to the extent that the testimony appears inconsistent with the written report."[8] Decision and Order on Remand at 18.

The administrative law judge properly explained that he gave controlling weight to Dr. Vaezy's diagnosis of legal pneumoconiosis because it was "supported by physical findings [and] based on first-hand observations of the miner over time, a myriad of testing, and work and smoking histories." Decision and Order on Remand at 17. Because the administrative law judge permissibly exercised his discretion in weighing the conflicting medical opinions, and in finding that the opinion of Dr. Vaezy was reasoned and documented, we affirm his finding that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[9] *See Stephens*, 298 F.3d at 522,

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Decision and Order on Remand at 18. The administrative law judge further noted that the miner testified that he also was required to shovel coal for four to five hours per shift and used a hand broom to clean coal. *Id*. The administrative law judge concluded that Dr. Vaezy's opinion, that the miner had a coal dust related lung disease, was supported by the miner's testimony. *Id.*

[8] Employer states that the administrative law judge is precluded from relying on the miner's hearing testimony because he was not the presiding judge at the hearing and was not able to assess the demeanor and credibility of the witness. Employer's Brief In Support of Petition for Review at 23. We disagree. As the miner is deceased, the administrative law judge had no other option but to rely on the transcript of the hearing held on July 18, 2006, and we consider his reliance on the miner's testimony at the hearing to be reasonable in determining the nature of the miner's coal dust exposure. *See Clark*, 12 BLR at 1-153.

[9] Employer asserts that the administrative law judge failed to consider aspects of Dr. Vaezy's opinion that detracted from the reliability of his diagnosis of legal pneumoconiosis, "such as his belief, unsupported by anything, that [the miner] had progressive massive fibrosis." Employer's Brief in Support of Petition for Review at 21. Employer, however, mischaracterizes Dr. Vaezy's opinion. Dr. Vaezy indicated in his report that a CT scan showed densities "compatible with complicated pneumoconiosis" but he did not offer a specific opinion that the miner had that disease. Claimant's Exhibit 4. During his deposition, Dr. Vaezy clarified that the x-ray he read was indicative of simple pneumoconiosis. Employer's Exhibit 7. Moreover, the fact that Dr. Vaezy diagnosed clinical pneumoconiosis, either simple or complicated, does not detract from his specific opinion that the miner's pulmonary function testing showed an obstructive respiratory impairment consistent with exposure to coal dust and that the miner had legal pneumoconiosis.

22 BLR at 2-513; *Groves*, 277 F.3d at 236, 22 BLR at 2-330; *Wojtowicz*, 12 BLR at 1-165; *Clark*, 12 BLR at 1-151.

II. DISABILITY CAUSATION

The administrative law judge credited the opinion of Dr. Vaezy, in finding that the miner was totally disabled pursuant to 20 C.F.R. §718.204(c). Employer contends that Dr. Vaezy's opinion, as a matter of law, is insufficient to satisfy claimant's burden of proof on the issue of disability causation because he testified that contribution from coal dust exposure to the miner's disability was "minor at best." Employer's Brief in Support of Petition for Review at 26, *citing* Employer's Exhibit 7 at 27-28.

Pursuant to 20 C.F.R. §718.204(c)(1), pneumoconiosis is a "substantially contributing cause" of the miner's disability if it has a "material adverse effect" on the miner's respiratory or pulmonary condition or "[m]aterially worsens" a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment. 20 C.F.R. §718.204(c)(1). In interpreting this language, the Sixth Circuit has stated that pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if pneumoconiosis is a contributing cause of some discernible consequence to his or her totally disabling impairment. *See Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 611 22 BLR 2-288, 303 (6th Cir. 2001); *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997).

For the reasons discussed, *supra*, we affirm the administrative law judge's reliance on the medical reports of Dr. Vaezy, over his deposition testimony, as to the etiology of the miner's disabling respiratory impairment. Decision and Order on Remand at 18. Because Dr. Vaezy specifically opined in his medical reports that the miner's disabling COPD was due, in part, to coal dust exposure, his opinion is sufficient to support claimant's burden of proof at 20 C.F.R. §718.204(c). *See Cornett*, 227 F.3d at 576, 22 BLR at 2-121.

We conclude that the administrative law judge properly found that the opinions of Drs. Repsher and Dahhan were not probative as to the cause of the miner's disability, as neither physician was of the opinion that the miner had legal pneumoconiosis. *See Stephens*, 298 F.3d at 522, 22 BLR at 512; *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vac'd sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995). Moreover, to the extent that the administrative law judge found Dr. Vaezy's overall opinion, based on a review of his treatment records, written reports, and deposition testimony, that coal dust exposure contributed to the miner's respiratory disability, we affirm the administrative law judge's finding that claimant established disability causation at 20 C.F.R. §718.204(c). *See*

Jericol Mining, Inc. v. Napier, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We therefore affirm the award of benefits.

III. DATE OF ONSET

Employer contends that the administrative law judge erred in awarding benefits commencing April 2003, the month in which the miner filed his claim, without any consideration as to whether the record established a date of onset for the miner's total disability. Employer maintains that benefits should not be awarded prior to Dr. Vaezy's medical report of October 25, 2005, diagnosing a disabling respiratory impairment. Contrary to employer's contention, however, the administrative law judge specifically considered the record evidence and found that the miner was also diagnosed as totally disabled by Dr. Baker in 2003, but that "the date on which the miner *initially* became totally disabled due to the disease cannot be determined from the medical evidence of record." Decision and Order on Remand at 19 n.4 (emphasis added). Thus, we affirm, the administrative law judge's determination that claimant is entitled to benefits "commencing April 2003, the month in which the miner filed his claim, and ending April 2008, the month prior to the month in which he died." Decision and Order on Remand at 19; *see* 20 C.F.R. §725.503(b);[10] *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-50 (1990).

[10] The regulation at 20 C.F.R. §725.503(b) states, in relevant part:

> Benefits are payable to a miner who is entitled beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment. Where the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed.

20 C.F.R. §725.503(b).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge