BRB No. 05-0722 BLA

VIRGIL T. BRIGANCE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	
	)	DATE ISSUED: 06/29/2006
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	*EN BANC*

Appeal of the Decision and Order – Award of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Ronald K. Bruce, Greenville, Kentucky, for claimant.

Mark E. Solomons and Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy 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, McGRANERY, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Award of Benefits (04-BLA-5249) of Administrative Law Judge Daniel J. Roketenetz on a claim[1] filed pursuant to the

[1]Claimant filed his claim for benefits on November 1, 2001. Director's Exhibit 1.

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 initially considered whether the instant claim is timely filed pursuant to the three-year limitations period for the filing of claims provided in Section 422(f) of the Act, 30 U.S.C. §932(f), and its implementing regulation at 20 C.F.R. §725.308(a). The administrative law judge discussed claimant's testimony that two physicians told him that he was totally disabled due to pneumoconiosis, around the time he filed his claim for Kentucky workers' compensation benefits. In that claim, employer agreed to pay benefits in 1994. Hearing Transcript at 20-22; *see* Director's Exhibit 7. Because neither of these physicians' opinions is contained in the record, the administrative law judge found that he could not determine whether they were documented and reasoned, as required under *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216 (2002)(*en banc*), and, therefore, could not determine whether they triggered the running of the three-year limitations period pursuant to Section 725.308. The administrative law judge found that, despite claimant's testimony that two physicians communicated their diagnoses of total disability due to pneumoconiosis more than three years before claimant filed the instant claim in 2001, it is a timely claim as employer failed to rebut the presumption of timeliness pursuant to Section 725.308(c). Therefore, the administrative law judge determined that the claim would not be dismissed for failure to meet the three-year limitations requirement. The administrative law judge next credited claimant with twenty years of coal mine employment pursuant to the parties' stipulation, and considered the merits of the claim under 20 C.F.R. Part 718. The administrative law judge found that the medical opinion evidence establishes the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4)[2] and total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge awarded benefits, commencing November 2001.

On appeal, employer contends that the instant claim is time barred under Section 422(f) of the Act, 30 U.S.C. §932(f), and its implementing regulation at 20 C.F.R. §725.308(a), in light of claimant's uncontradicted testimony that two physicians told him he was totally disabled due to pneumoconiosis more than three years prior to the filing of the instant claim in 2001. Employer thus urges the Board to reverse the administrative law judge's finding that employer failed to rebut the presumption of timeliness provided at Section 725.308(c). Alternatively, employer asserts that if the claim is not time barred, the administrative law judge's decision on the merits must be vacated, as it is not supported by substantial evidence or in accordance with applicable law. Claimant

[2]The administrative law judge found claimant had established the existence of clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge did not render a finding regarding the cause of pneumoconiosis pursuant to 20 C.F.R. §718.203(b).

responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation (the Director), has filed a response brief limited to the timeliness issue. The Director urges the Board to affirm the administrative law judge's determination that the instant claim is not time barred. Employer has filed a reply brief, restating its earlier arguments. Employer subsequently filed a Motion for Oral Argument dated October 20, 2005, which claimant contested. By Order dated January 13, 2006, the Board granted employer's motion and scheduled oral argument with respect to the timeliness issue. *Brigance v. Peabody Coal Co.* BRB No. 05-0722 BLA (Jan. 13, 2006)(unpublished Order). Prior to oral argument, employer filed a Supplemental Brief in which it reiterated its previous arguments. Oral argument was held in Louisville, Kentucky on February 22, 2006.

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. 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).

Employer contends that claimant's uncontradicted testimony establishes that a medical opinion of total disability due to pneumoconiosis was communicated to him more than three years prior to filing the instant claim in 2001 and thus, contrary to the administrative law judge's determination, the instant claim is time barred under 20 C.F.R. §725.308. Employer also argues that, contrary to the administrative law judge's finding, the Board's decision in *Furgerson* does not require that an administrative law judge determine whether the medical opinions of total disability due to pneumoconiosis arising out of coal mine employment, communicated to the miner, are reasoned and documented. Employer further contends that the administrative law judge's decision not to dismiss the claim for failure to meet the three-year filing limitation, circumvents the plain meaning of Section 422(f) of the Act, which imposes that limitation. In its Supplemental Brief, employer argues that because the purpose of a statute of limitations is to "require claimants to file their claims as soon as they know or have reason to believe that they have a claim," the black lung disability criteria and the quality of the physician's opinion have nothing to do with this inquiry. Employer's Supplemental Brief at 6. Rather, employer maintains that "[a] statute of limitation is invoked based on what the claimant knows--not on how good a report the doctor writes." *Id.*

Claimant argues that his state benefits were for *partial* disability, as the benefits ceased in June of 2002; claimant asserts that if he had been found to be totally disabled by Kentucky, "he would have received benefits for his lifetime. (Kentucky Revised Statutes 342.732 attached; DX 7 & 8[.])" Claimant's Brief at 9. Claimant argues that while employer relies on *Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-

288 (6th Cir. 2001)[3] in arguing that the claim is time barred, the United States Court of Appeals for the Sixth Circuit held, in its unpublished decision in *Peabody Coal Co. v. Director, OWCP* [*Dukes*], 48 Fed. Appx. 140, 2002 WL 31205502 (6th Cir. Oct. 2, 2002), that a misdiagnosis does not equate to a "medical determination," as referred to in Section 725.308(a). Claimant argues that since claimant's Kentucky state benefits were based on a finding of partial disability, the opinions of the two physicians, who claimant testified found him to be totally disabled due to pneumoconiosis, were not well-reasoned and cannot constitute medical determinations sufficient to trigger the running of the three-year limitations period. Claimant's Brief at 11. Claimant argues that the administrative law judge thus properly determined that employer did not rebut the presumption of timeliness found at Section 725.308(c).

The Director argues that because the "medical determination" communicated to the miner need not be in writing, the administrative law judge erroneously found that the fact that the medical opinions in question are not in the record is a sufficient basis for rejecting employer's argument that the claim is time barred. The Director, however, asserts that the error is harmless "given an alternative reason for finding the Act's statute of limitations does not bar claimant's current application." Director's Brief at 2. Specifically, the Director asserts that because the two medical opinions at issue are not in the record, the administrative law judge could not determine whether the physicians "diagnosed total disability due to pneumoconiosis consistent with the Black Lung Benefits Act standards, rather than the Kentucky standards" and, therefore, these two medical opinions are insufficient under *Kirk* to trigger the running of the three-year limitations period. *Id.* at 3.

After considering the administrative law judge's Decision and Order – Award of Benefits, the issues on appeal, and the relevant evidence of record, we find no reversible error in the administrative law judge's determination that the instant claim is timely filed. Section 422(f) of the Act, 30 U.S.C. §932(f), and its implementing regulation at 20 C.F.R. §725.308(a) provide that a claim for benefits must be filed within three years of a *medical* determination of total disability due to pneumoconiosis which has been communicated to the miner. The regulation at Section 725.308(c) provides a rebuttable presumption that every claim for benefits filed under the Act is timely filed. 20 C.F.R. §725.308(c). The Sixth Circuit court, in *Kirk*, stated that it is "employer's burden to rebut the presumption of timeliness by showing that a medical determination satisfying

[3]The instant case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant's coal mine employment occurred in Kentucky. Director's Exhibit 3; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

the statutory definition was communicated to [the claimant]" more than three years prior to the filing of his/her claim. *Kirk*, 264 F.3d at 607, 22 BLR at 2-296.

To rebut the presumption of timeliness in this case, employer relies solely on testimony provided by claimant at the December 14, 2004 hearing before the administrative law judge. At the hearing, claimant testified that the medical evidence submitted in 1994 in connection with his Kentucky claim for black lung benefits indicated that he was totally disabled by his black lung. Hearing Transcript at 21. Specifically, claimant testified that Dr. Anderson and another physician, whose name he could not remember, told him "that they felt [he was] totally disabled by Black Lung." *Id*. In defining what constitutes a medical determination that is sufficient to start the running of the statute of limitations, the Sixth Circuit court, in *Kirk*, stated that the statute relies on the "trigger of the reasoned opinion of a medical professional." Under the language set forth in *Kirk*, claimant's mere statement that he was told by two physicians that he was totally disabled by black lung is insufficient to trigger the running of the statute of limitations.[4] Accordingly, we affirm the administrative law judge's finding that employer failed to rebut the presumption of timeliness provided at Section 725.308(c) and, therefore, further affirm his finding that the instant claim is timely filed.

We next address the parties' arguments regarding the administrative law judge's award of benefits on the merits of the claim.[5] Employer first contends that the administrative law judge erred in failing to consider all the relevant x-ray evidence of record. Specifically, employer asserts that the administrative law judge "overlooked" a negative reading of the September 22, 2003 x-ray by Dr. Schultheis, who is a B reader and a Board-certified radiologist. The record contains a reading of the September 22,

[4]Employer and the Director, Office of Workers' Compensation (the Director), assert that they disagree with the Board's holding in *Adkins v. Donaldson Mine Co.*, 19 BLR 1-34, 1-43 (1993), that Section 725.308 requires "a medical determination of total disability due to pneumoconiosis" to be "communicated" to the miner in writing. Based on the facts of this case, we need not address the assertion of the Director and employer that a medical determination of total disability due to pneumoconiosis need not be in writing for the purpose of triggering the three-year limitations period.

[5]We affirm the administrative law judge's finding of twenty years of coal mine employment and his finding that the evidence fails to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(a)(3) as they are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). We additionally affirm, as unchallenged, the administrative law judge's finding that the evidence fails to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (b)(2)(iii). *Id.*

2003 x-ray by Dr. Schultheis, in which he found no evidence of active disease. Employer's Exhibit 1. Because the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), we deem harmless any error the administrative law judge may have made in not considering the negative x-ray reading by Dr. Schultheis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Employer next contends that the administrative law judge erred in finding the existence of clinical and legal pneumoconiosis pursuant to Section 718.202(a)(4). For the reasons discussed, *infra*, we vacate the administrative law judge's finding that claimant established the existence of clinical and legal pneumoconiosis pursuant to Section 718.202(a)(4) and remand this case for the administrative law judge to reconsider the relevant evidence.

Pursuant to Section 718.202(a)(4), the record contains the opinions of Drs. Baker and Simpao, who found the existence of clinical pneumoconiosis, and the opinions of Drs. Fino and Repsher, who did not. Dr. Fino submitted two opinions, dated November 10, 2004 and February 7, 2005, which the administrative law judge found were not well-reasoned. Decision and Order at 14. In his Decision and Order, the administrative law judge did not explain his rationale for determining that Dr. Fino's 2004 opinion was not well-reasoned. *Id.* Therefore, on remand the administrative law judge should reconsider Dr. Fino's 2004 opinion and provide his reasoning with regard to his crediting or discrediting of that opinion. Regarding Dr. Fino's 2005 opinion, the administrative law judge stated that Dr. Fino reviewed Dr. Baker's "well-reasoned and well-documented opinion regarding clinical pneumoconiosis," but that Dr. Fino "relied upon his previous determinations, even though he obtained newly submitted evidence [from Dr. Baker] that could have influenced his pneumoconiosis decision." *Id.* Because the administrative law judge found that Dr. Fino failed to explain why his review of Dr. Baker's test results and diagnoses did not cause him to change his original conclusions regarding the existence of pneumoconiosis, the administrative law judge concluded that Dr. Fino's 2005 opinion was not well-reasoned. *Id.* However, as employer argues, because the administrative law judge later found Dr. Baker's finding of clinical pneumoconiosis to be unreasoned and undocumented,[6] "it is difficult to understand what evidence the judge was referring to

[6]The administrative law judge found Dr. Baker's opinion regarding the existence of clinical pneumoconiosis to be not well-reasoned or well-documented because he found that this physician's diagnosis of clinical pneumoconiosis was based solely on claimant's x-ray and coal dust exposure history. Decision and Order at 15. As employer asserts, Dr. Simpao's finding of clinical pneumoconiosis is also based solely on an x-ray and claimant's coal dust exposure history, but the administrative law judge did not explain how he "rel[ied] upon" Dr. Simpao's opinion regarding clinical pneumoconiosis, but found Dr. Baker's opinion to be "neither well-reasoned nor well-documented" when both

that might have made a difference" in Dr. Fino's original conclusions. Employer's Brief at 15. Consequently, as the administrative law judge has provided inconsistent statements regarding the credibility of Dr. Baker's clinical pneumoconiosis finding, on remand the administrative law judge must reconsider the weight to be accorded to Dr. Fino's 2005 opinion. Additionally, as employer contends, in concluding that he relied upon "Dr. Simpao's finding with respect to clinical pneumoconiosis, versus Dr. Repsher's determination of no pneumoconiosis," the administrative law judge failed to provide his reasoning for "rely[ing] upon" Dr. Simpao's opinion over Dr. Repsher's opinion. Decision and Order at 16. Accordingly, on remand the administrative law judge must reconsider the conflicting opinions of Drs. Simpao and Repsher regarding the existence of clinical pneumoconiosis and provide an explanation regarding the weight to be accorded each opinion.[7] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589, 1-591 (1984).

In finding that claimant established the existence of legal pneumoconiosis, the administrative law judge relied solely on the opinion of Dr. Baker. Decision and Order at 16. In doing so, the administrative law judge found Dr. Baker's opinion, that claimant's

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of these physicians gave the same bases for their diagnoses of clinical pneumoconiosis. Therefore, on remand, the administrative law judge should reconsider Dr. Simpao's opinion regarding the existence of clinical pneumoconiosis and clarify his rationale for "relying upon" this physician's opinion. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Tenney v. Badger Coal Co.*, 7 BLR 1-589, 1-591 (1984).

[7]Employer asserts that the administrative law judge erred in failing to consider Dr. Schultheis's interpretation of a September 22, 2003 CT scan. The record contains an interpretation of the September 22, 2003 x-ray by Dr. Schultheis in which there are no notations regarding the presence or absence of pneumoconiosis. There is no discussion of Dr. Schultheis's CT scan interpretation in the administrative law judge's decision. In claimant's response brief, he asserts that this CT scan was not submitted as evidence in this claim by employer. However, contrary to claimant's assertion, Dr. Schultheis's CT scan interpretation is contained in Employer's Exhibit 1 and the administrative law judge admitted Employer's Exhibit 1 into the record at the hearing. Hearing Transcript at 8-9. Accordingly, because the administrative law judge failed to consider this relevant piece of evidence when considering whether claimant established the existence of clinical pneumoconiosis, on remand the administrative law judge should consider Dr. Schultheis's CT scan interpretation. *See Wojtowicz*, 12 BLR at 1-165; *Tenney*, 7 BLR at 1-591; *see generally Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006) (*en banc*) (Boggs, J., concurring) (Board instructed administrative law judge on remand to require employer to select and submit only one reading of each test pursuant to 20 C.F.R. §718.107(b)).

moderate obstructive defect was due to his coal dust exposure and cigarette smoking, to be "well-reasoned and well-documented" because this physician's "determination is based upon his qualifying pulmonary function study."[8] *Id.* However, a review of Dr. Baker's November 17, 2002 and November 4, 2004 reports does not indicate that he based his finding of the existence of legal pneumoconiosis on claimant's qualifying pulmonary function study. In fact, in his 2004 report, Dr. Baker noted that the "volume curves and shapes" on claimant's pulmonary function studies "are somewhat suggestive of suboptimal effort," but other factors suggest that his pre- bronchodilator and post-bronchodilator studies "are probably valid." Claimant's Exhibit 2. Based on the foregoing, it is unclear, without further elaboration by the administrative law judge, whether he properly found Dr. Baker's conclusion, that claimant's moderate obstructive defect was due to his coal dust exposure and cigarette smoking, to be well-reasoned and well-documented. Therefore, on remand, the administrative law judge should clarify his rationale for crediting Dr. Baker's opinion. *See Wojtowicz*, 12 BLR at 1-165; *Tenney*, 7 BLR at 1-591.

Additionally, as employer asserts, the administrative law judge erred in his consideration of the opinions of Drs. Repsher and Fino regarding the existence of legal pneumoconiosis. With regard to Dr. Repsher, the administrative law judge stated that this physician found that claimant suffered from chronic bronchitis and bullous pulmonary emphysema, but because Dr. Repsher did not attribute these conditions to claimant's coal dust exposure, the administrative law judge concluded that his findings "do not qualify as legal pneumoconiosis." Decision and Order at 15. In his report, Dr. Repsher found claimant's "bullous pulmonary emphysema [to be] related to his prior and continued smoking habit and found that none of claimant's other conditions could "be fairly attributed to his work as a coal miner with inhalation of coal dust." Employer's Exhibit 1. Thus, while Dr. Repsher's conclusions do not support a finding of the presence of legal pneumoconiosis, they are probative regarding the absence of this disease in claimant. Therefore, on remand, the administrative law judge should consider that Dr. Repsher's opinion is not neutral, but rather, is supportive of a finding of the absence of legal pneumoconiosis. In his Decision and Order, the administrative law judge also concluded that he relied "upon Dr. Baker's opinion regarding legal pneumoconiosis...versus Dr. Repsher's determination of no pneumoconiosis," but did not provide a rationale for relying on Dr. Baker's opinion over Dr. Repsher's opinion. Moreover, in considering Dr. Fino's opinion, the administrative law judge erred in mischaracterizing this physician's opinion when he stated that because Dr. Fino failed to

[8]The administrative law judge found Dr. Baker's diagnosis of chronic bronchitis due to coal dust exposure and cigarette smoking to be "neither well-reasoned nor well-documented" because this physician "failed to cite any objective medical testing or data that was supportive of his determination." Decision and Order at 15-16.

list an etiology for claimant's airway obstruction, "his diagnosis does not signify legal pneumoconiosis." Decision and Order at 15; *see generally Beatty v. Danri Corporation and Triangle Enterprises*, 16 BLR 1-11 (1991); *Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). In his report, Dr. Fino found claimant's airway obstruction to be "most consistent with a smoking-related abnormality." Employer's Exhibits 2, 4. In light of the above, on remand the administrative law judge should reconsider the opinions of Drs. Repsher and Fino, along with the opinion of Dr. Baker, regarding the existence of legal pneumoconiosis, and provide a rationale for crediting or discrediting this evidence, as required by the Administrative Procedure Act.[9] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165; *Tenney*, 7 BLR at 1-591.

Pursuant to Section 718.204(b)(2)(iv),[10] employer asserts that the administrative law judge erred in finding total respiratory disability based on the medical opinion evidence, without determining whether the physicians, whose opinions were in the record, were aware of the physical demands of claimant's usual coal mine employment. Drs. Simpao, Baker, and Fino all found claimant to be totally disabled from performing his last coal mine employment. Dr. Repsher found that claimant's "degree of obstructive impairment [could not] be determined, due to his suboptimal effort in performing spirometry studies. Arterial blood gases at rest, however, are normal." Employer's Exhibit 1. In considering the medical opinion evidence pursuant to Section

[9]Because the administrative law judge failed to render findings regarding the cause of claimant's pneumoconiosis, the administrative law judge should consider all the relevant evidence regarding whether claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), if the issue is again reached on remand.

[10]Claimant asserts that the administrative law judge erred in stating that the test results for the December 21, 2001 pulmonary function study performed by Dr. Simpao yielded non-qualifying values pursuant to 20 C.F.R. §718.204(b)(2)(i) when, in fact, this study yielded qualifying values. In doing so, claimant maintains that the administrative law judge failed to acknowledge that the FEV_1/FVC value from this test was 53 percent, which qualifies under the regulations. Notwithstanding the FEV_1/FVC value, in order to qualify under the regulations at a height of 67 inches and an age of 66, as recorded on the December 21, 2001 pulmonary function study, claimant's FEV_1 value must be equal to or less than 1.71. Appendix B to 20 C.F.R. Part 718. The FEV_1 value recorded on the December 21, 2001 study was 1.82. Director's Exhibit 11. Therefore, contrary to claimant's assertion, the administrative law judge was correct in characterizing the December 21, 2001 pulmonary function study as non-qualifying. As no other challenges to the administrative law judge's Section 718.204(b)(2)(i) finding have been made by the parties, we affirm it.

718.204(b)(iv), the administrative law judge properly noted that "[a]ll of the physicians of record, except Dr. Repsher, opined that the Claimant was totally disabled." Decision and Order at 19. Contrary to employer's assertion, the record reflects that Drs. Simpao, Baker, and Fino had knowledge of claimant's usual coal mine employment as a wash box operator/stationary equipment operator,[11] Director's Exhibit 11, Claimant's Exhibit 2, Employer's Exhibit 2, as required by *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Therefore, we affirm the administrative law judge's finding that claimant has established total respiratory disability pursuant to Section 718.204(b)(2)(iv), as it is supported by substantial evidence. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g* 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Considering all of the medical evidence, the administrative law judge stated "[a]cknowledging that the arterial blood gas analysis and pulmonary function study evidence stands in equipoise, I rely on the medical reports to conclude that the Claimant has established total disability per Section 718.204(b)(2)." Decision and Order at 19. Because we affirm the administrative law judge's findings pursuant to Section 718.204(b)(2)(i)-(iv), *see* discussion, *supra*, we also affirm the administrative law judge's finding that claimant established total respiratory disability pursuant to Section 718.204(b), based on all of the medical evidence in the record. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*).

Employer also contends that the administrative law judge erred in failing to explain why he found total disability due to pneumoconiosis based on Dr. Simpao's opinion. Pursuant to Section 718.204(c), the administrative law judge noted that Drs. Baker and Repsher did not provide an opinion on the cause of claimant's total respiratory disability. Decision and Order at 20. The administrative law judge further noted that "Dr. Fino's reports were not well-reasoned regarding pneumoconiosis."[12] *Id.* Accordingly, the administrative law judge concluded that claimant established total disability due to pneumoconiosis based on "[t]he only well-reasoned medical report regarding pneumoconiosis and total disability [which] is Dr. Simpao's opinion." *Id.*

[11]The administrative law judge noted that claimant testified that his last coal mining job as a wash box operator required him to sort coal and rock while washing it with water. Hearing Transcript at 11-12.

[12]Dr. Fino opined that claimant's total respiratory disability was due to his cigarette smoking. Employer's Exhibits 2, 4.

Because we instruct the administrative law judge, on remand, to reevaluate his weighing of the opinions of Drs. Fino and Simpao regarding the existence of pneumoconiosis, we also vacate the administrative law judge's Section 718.204(c) finding, because it is based on his consideration of the opinions of Drs. Fino and Simpao at Section 718.202(a)(4). If the issue of disability causation is again reached on remand, the administrative law judge must consider all the relevant evidence regarding whether claimant's total respiratory disability is due to pneumoconiosis, 20 C.F.R. §718.204(c); *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989), and fully explain the rationale for his conclusions, *Wojtowicz*, 12 BLR at 1-165; *Tenney*, 7 BLR at 1-591.

Finally, because we vacate the administrative law judge's weighing of the evidence at Sections 718.202(a) and 718.204(c), we also vacate the administrative law judge's finding regarding the date of entitlement and instruct the administrative law judge to reconsider this issue, if reached, on remand.

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

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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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge