BRB No. 05-0952 BLA

CHARLIE COLLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MOUNTAIN CLAY, INCORPORATED	)	DATE ISSUED: 06/13/2006
	)	
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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams, and Rutherford), Norton, Virginia, for claimant.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

McGRANERY, Administrative Appeals Judge:

Employer appeals the Decision and Order-Awarding Benefits (04-BLA-5429) of Administrative Law Judge Rudolf L. Jansen rendered on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Based on the date of filing, February 12, 2002, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718, and found that claimant established forty years of coal mine employment. The administrative law judge further found that the evidence of record was sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), and a totally disabling respiratory impairment

due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv), (c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding the existence of pneumoconiosis established pursuant to Section 718.202(a)(4), and total disability due to pneumoconiosis established pursuant to Section 718.204(c). Claimant responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, (the Director) has filed a letter indicating that he will not participate in this appeal.

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

Employer first contends that the administrative law judge erred in discrediting the opinions of Drs. Rosenberg and Dahhan, that claimant did not have either clinical or legal pneumoconiosis, because these opinions were based on scientific studies that showed that miners who did not smoke and were exposed only to coal dust never develop a disabling obstructive respiratory impairment, a finding contrary to the Act, the regulations, and case law.[1] Employer contends that Drs. Rosenberg and Dahhan did not base their diagnoses of no pneumoconiosis on a generalization or preconceived notion that coal dust can never cause obstructive lung disease, but instead explained why the evidence in this case did not show the existence of pneumoconiosis. Additionally, employer contends that the reduction in claimant's values on pulmonary function studies after the administration of bronchodilators, does not, as the administrative law judge found, tend to disprove the opinions of Drs. Dahhan and Rosenberg that claimant suffered from a

[1] Section 718.201(a)(2) provides in pertinent part that the definition of legal pneumoconiosis includes chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

reversible respiratory disease. In conclusion, employer contends that the administrative law judge impermissibly shifted the burden of proof to employer to prove that coal dust was not a factor in causing claimant's obstructive impairment.

In formulating his opinion, Dr. Dahhan reviewed the findings of his physical examination, claimant's histories of both smoking and coal mine employment, and the results of objective tests. From these he determined that claimant had a severe impairment which was purely obstructive and that the impairment demonstrated "response to bronchodilator therapy indicating that it was not fixed in nature." Decision and Order at 10; Employer's Exhibits 1, 2.[2] The doctor described several studies wherein miners who did not smoke or have another respiratory impairment were not found to have a disabling respiratory obstruction secondary to the inhalation of coal dust. Employer's Exhibit 2. He concluded that because a severe disabling obstructive impairment is "rarely if ever seen secondary to the inhalation of coal dust, *per se*[,]" claimant's impairment is unrelated to coal mine employment. Employer's Exhibit 1; Decision and Order at 10.

Likewise, Dr. Rosenberg found that claimant did not suffer from clinical or legal pneumoconiosis. He considered the results of examination, histories and objective tests, and determined that claimant had a severe obstructive impairment. He referred to several scientific studies in support of his belief that the "pattern of airflow obstruction in miners such as claimant was such that the severe nature of a reduction in the FEV^1/FVC ratio would not occur with coal dust exposure." Employer's Exhibit 11. Dr. Rosenberg reiterated that the pattern of obstruction seen in claimant is not what has been demonstrated in coal miners and that claimant had marked bronchodilator response which would not be expected in a coal mining induced obstruction; he concluded that the pattern seen in claimant was not attributable to coal dust exposure. Decision and Order at 8-9; Employer's Exhibits 3, 11.

The administrative law judge determined to give less weight to the opinions of Drs. Dahhan and Rosenberg because:

> these doctors based their findings of no pneumoconiosis on scientific studies that showed miners who did not smoke and were exposed only to

[2] Drs. Baker, Dahhan, and Rosenberg were aware of claimant's approximately forty year coal mine employment history and his approximately twenty pack year smoking history. The administrative law judge determined that although claimant reported a history of nonsmoking to Dr. Dahhan, Dr. Dahhan appeared to rely on the twenty pack year smoking history claimant reported to Dr. Baker. Decision and Order at 8-10; Director's Exhibit 10; Employer's Exhibits 1, 2.

> coal dust never developed a disabling obstructive respiratory impairment. This premise has been found contrary to the regulations, both by the courts and in the comments to the amended regulations. *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473 (7th Cir. 2001).

Decision and Order at 13. The administrative law judge was referring to the Seventh Circuit's statement in *Summers*:

> Dr. Fino stated in his written report of August 30, 1998 that "there is no good clinical evidence in the medical literature that coal dust inhalation in and of itself causes significant obstructive lung disease." (Br. Supp. Pet. Modif'n at 23 (March 10, 1999)). During a rulemaking proceeding, the Department of Labor considered a similar presentation by Dr. Fino and concluded that his opinions "are not in accord with the prevailing view of the medical community or the substantial weight of the medical and scientific literature." 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000).

Freeman United Coal Mining Co. v. Summers, 272 F.3d 473, 483 n.7, 22 BLR 2-266, 2-281 n.7 (7th Cir. 2001). The administrative law judge, therefore, properly discredited the opinions of Drs. Dahhan and Rosenberg for the same reason the administrative law judge discredited the opinion of Dr. Fino in *Summers*. Employer seeks to evade the force of *Summers* by stating that the opinions of Drs. Dahhan and Rosenberg were based on their analyses of the evidence and not on the cited medical literature. However, a review of their opinions confirms the administrative law judge's conclusion: the doctors' analyses of the evidence were predicated on the studies they cited, these studies formed the prism through which the doctors saw and understood the evidence. The administrative law judge's citation of *Summers* is entirely appropriate. The Seventh Circuit's point in *Summers* was that Dr. Fino's analysis of his findings was unreasoned because "his opinions are not in accord with the prevailing view of the medical community or the substantial weight of the medical and scientific literature. 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000)." *Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-266, 2-281 n.7. It is by relying on these discredited studies that the doctors were able to opine with certitude that claimant's disabling obstructive impairment is unrelated to coal dust exposure. Thus, the administrative law judge reasonably found that the opinions of Drs. Dahhan and Rosenberg, that claimant did not have pneumoconiosis and that his obstructive respiratory disease was not related to coal mine employment, were based on scientific studies contrary to the prevailing view of the medical community and contrary to the understanding of pneumoconiosis as defined by the Act and reflected in the amended regulations and the case law. 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000); *Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-266, 2-281 n.7.

Further, the administrative law judge permissibly found the opinions of Drs. Dahhan and Rosenberg less credible as they opined that claimant's pulmonary condition "responded" to bronchodilator treatment because the individual measurements improved, when, in fact, claimant's overall lung function worsened, as evidenced by the pulmonary function studies which indicated that the FEV_1/FVC ratio declined after the administration of bronchodilators in both the study performed on May 10, 2002 and the study performed on November 20, 2004. Decision and Order at 13.[3] The administrative law judge credited claimant's unequivocal testimony that the inhalers and breathing machine prescribed to him did not help him breathe any better. Hearing Transcript at 23-24. In light of the test results and claimant's testimony, the administrative law judge rationally determined that the opinions of Drs. Dahhan and Rosenberg were based on faulty reasoning, *i.e.*, that claimant's respiratory condition was reversible rather than fixed. Decision and Order-Awarding Benefits at 8-10, 12-13; Employer's Exhibits 1-3, 11; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibralter Coal Corp.*, 6 BLR 1-1291 (1984).

Employer's final allegation of error regarding the administrative law judge's discounting of the opinions of Drs. Dahhan and Rosenberg is that the administrative law judge shifted the burden of proof to employer, requiring it to prove that pneumoconiosis did not contribute to claimant's impairment. Employer, however, cites nothing in the record to support its contention Decision and Order-Awarding Benefits at 8-10, 12-13; Employer's Exhibits 1-3, 11; *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Adams v. Peabody Coal Co.*, 816 F.2d 1116, 10 BLR 2-69 (6th Cir. 1987); *Stephens v. Bethlehem Mines Corp.*, 8 BLR 1-350 (1985); *Hoffman v. B&G Construction Co.*, 8 BLR 1-65 (1985).[4]

[3] Employer implicitly concedes the validity of the administrative law judge's criticism by responding with a vague assertion and a plea for unreasoned deference to medical expertise: "[T]he reduction from 2002 to 2004 does not tend to disprove the opinions of Dr. Dahhan and Dr. Rosenberg. In any case, a physician's medical judgment, even if based on instinct, is nonetheless grounded in years of experience and has a great deal of significance. *Mancia v. Director, OWCP*, 130 F.3d 579, 589 (3d Cir. 1997)." Brief for Employer at 8-9.

[4] Because the miner last worked in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 5.

Employer also contends that the administrative law judge erred in finding that the opinion of Dr. Baker established the existence of clinical pneumoconiosis as Dr. Baker's finding of clinical pneumoconiosis was based solely on x-ray and a coal mine employment history which do not by themselves provide sufficient documentation to support a finding of pneumoconiosis. Likewise, employer asserts that Dr. Baker's opinion does not establish the existence of legal pneumoconiosis as Dr. Baker did not explain how claimant's chronic obstructive pulmonary disease, hypoxemia, and chronic bronchitis were related to his coal dust exposure; employer observed that claimant's coal mine employment history alone cannot provide the basis for relating these conditions to coal mine employment.

In finding that Dr. Baker's opinion established the existence of pneumoconiosis, the administrative law judge noted that Dr. Baker considered claimant's history of coal mine employment and smoking, his medical history, symptoms, x-ray, pulmonary function study, blood gas study, and electrocardiogram. The administrative law judge credited Dr. Baker's diagnosis of clinical pneumoconiosis, which was based on an "abnormal x-ray and coal dust exposure," and his diagnosis of legal pneumoconiosis, *i.e.*, that claimant's chronic obstructive pulmonary disease, hypoxemia, and chronic bronchitis were due to a combination of claimant's exposure to coal dust and cigarette smoking. Decision and Order at 8, 12.

As employer contends, Dr. Baker's opinion cannot establish the existence of clinical pneumoconiosis as it was based solely on x-ray and coal dust exposure history. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Milburn Colliery Coal Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998). However, contrary to employer's argument, the administrative law judge rationally found that Dr. Baker's opinion established the existence of legal pneumoconiosis as Dr. Baker's opinion that claimant's respiratory impairment arose in part out of coal mine employment, meets the definition of legal pneumoconiosis, 20 C.F.R. §718.201, and the administrative law judge found that it was a reasoned opinion because it was supported by Dr. Baker's findings on examination, history, symptoms, and objective tests. Decision and Order-Awarding Benefits at 8-10, 12-13; Employer's Exhibit 9; Director's Exhibit 10; *Ondecko*, 512 U.S. 267, 18 BLR 2A-1; *Cornett*, 227 F.3d 569, 22 BLR 2-107; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).[5] *Brown v. Director, OWCP*, 7 BLR 1-730, 1-733 (1985) (administrative law judge is to determine whether doctor's opinion is in accordance with medical evidence).

[5] The administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1)-(3), 718.203, and 718.204(b), are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Finally, employer contends that the administrative law judge erred in finding that claimant's totally disabling respiratory impairment was due to pneumoconiosis pursuant to Section 718.204(c). The Sixth Circuit's statement in *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002) applies with equal force to the case at bar:

> [E]mployer's central argument, when stripped to its essentials, appears to be a quarrel with the [administrative law judge's] credibility determinations. But this court is required to defer to the [administrative law judge's] assessment of the physicians' credibility. *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836 (6th Cir. 2002)("Lacking the authority to make credibility determinations, we will defer to the [administrative law judge's findings].").

In considering the medical opinion evidence on disability causation, the administrative law judge accorded little weight to the opinions of Dr. Dahhan and Dr. Rosenberg as these physicians did not diagnose the existence of either clinical or legal pneumoconiosis. Decision and Order-Awarding Benefits at 8-10, 15; Employer's Exhibits 1-3, 11. This was proper. *Skukan v. Consolidated Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vacated 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); *see Cornett*, 227 F.3d 569, 22 BLR 2-107; *Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003); *Clark*, 12 BLR 1-155; *Fields*, 10 BLR 1-19 (1987); *see Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372(4th Cir. 1998); *Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995).

Instead, the administrative law judge credited Dr. Baker's opinion that coal dust exposure was the cause of claimant's totally disabling respiratory impairment and the administrative law judge found that the report supported a finding that pneumoconiosis had a "material adverse effect on the miner's respiratory or pulmonary condition." Decision and Order at 15; 20 C.F.R. §718.204(c)(1)(i). Employer's contention that there is insufficient evidentiary support for Dr. Baker's opinion must fail. The Sixth Circuit has held that such a determination would require the court to address the doctor's credibility which would exceed its limited scope of review. *See Wolf Creek Collieries v. Director, OWCP*, 298 F.3d 511, 522, 22 BLR 2-494, 2-513 (6th Cir. 2002). The Sixth Circuit is emphatic that it is for the administrative law judge as factfinder to "decide whether a physician's report is 'sufficiently reasoned,' because such a determination is 'essentially a credibility matter'." *Id*. at 522, 22 BLR at 2-512 quoting *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002)(quoting *Director, OWCO v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983)). Like the Sixth Circuit in *Wolf Creek Collieries*, 298 F.3d at 836, 22 BLR at 2-513, "[w]e recognize that the evidence of record may permit an alternative conclusion, but we defer to the

[administrative law judge's] authority in the findings of fact." The administrative law judge credited Dr. Baker's opinion that coal dust exposure was the cause of claimant's totally disabling respiratory impairment and the administrative law judge found that the report supported a finding that pneumoconiosis had a "material adverse effect on the miner's respiratory or pulmonary condition." Decision and Order at 15; 20 C.F.R. §718.204(c)(1)(i). The administrative law judge accorded less weight to the causation opinions of Drs. Dahhan and Rosenberg because they did not find the existence of pneumoconiosis. We, therefore affirm, the administrative law judge's finding that claimant's total disability was due to pneumoconiosis as defined under Section 718.204(c). 20 C.F.R. §718.204(c)(1)(i); *see Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997).

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

SO ORDERED.

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REGINA C. McGRANERY
Administrative Appeals Judge

I concur:

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BETTY JEAN HALL
Administrative Appeals Judge

SMITH, Administrative Appeals Judge, concurring and dissenting:

While I would affirm the administrative law judge's findings at 20 C.F.R. §§718.202(a)(1)-(3), 718.203(b), and 718.204(b) as unchallenged on appeal, *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983), I disagree with my colleagues that the administrative law judge's finding of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) can be affirmed. I would, therefore, remand the case for reconsideration of the relevant doctors' opinions in light of errors the administrative law judge made in evaluating them. Further, because the administrative law judge's findings at Section 718.202(a)(4) concerning the credibility of doctors' opinions necessarily impact any findings he made on causation at Section 718.204(c), I would also vacate the administrative law judge's findings at that Section and remand the case for reconsideration thereunder, if reached.

Concerning the administrative law judge's consideration of the opinions of Drs. Dahhan and Rosenberg pursuant to Section 718.202(a)(4), I believe that the administrative law judge erred in his evaluation of their opinions. First, the administrative law judge accorded little weight to their opinions, that claimant did not have legal pneumoconiosis, because he found that their opinions were based "on scientific studies that showed miners who did not smoke and were exposed only to coal dust never developed a disabling obstructive respiratory impairment[,]" a premise contrary to the amended regulations and case law. Decision and Order at 13.[6] Review of these opinions, however, show, as employer contends, that the doctors did not base their diagnoses on these studies alone nor on any generalization or preconceived notion, that coal dust can never cause obstructive lung disease, but instead, they explained why the evidence in this case did not support a finding of pneumoconiosis or that claimant's obstructive lung disease arose out of coal mine employment. As employer contends, both doctors acknowledged the fact that coal dust exposure can cause an obstructive impairment; *see Hunt v. Kentland Elkhorn Coal Corp.*, No. 04-3723 (6th Cir. 2005) (unpub.), *aff'g Hunt v. Kentland Elkhorn Coal Corp.*, BRB Nos. 03-0364 BLA/A (Mar. 31, 2004)(unpub.); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996), and both doctors relied on, in addition to their review of scientific studies, examinations, histories, symptoms and the results of pulmonary function and blood gas studies. Thus, their opinions were based on a number of factors and the administrative law judge erred in according their opinions diminished weight because they were based on scientific studies contrary to the premise of the Act, amended regulations and case law. *See* Employer's Exhibits 1, 2, 3, 11; 20 C.F.R. §718.201(a)(2); *Stiltner*, 86 F.3d 337, 20 BLR 2-246; *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984) (administrative law judge may not selectively analyze evidence, but must take doctor's entire opinion into consideration).

In addition, I also believe that the administrative law judge erred in according diminished weight to the opinions of Drs. Dahhan and Rosenberg because their opinions, that claimant responded to bronchodilator treatment, were not supported by pulmonary function study results showing that claimant's performance actually worsened with the administration of bronchodilators. While the administrative law judge is correct that the FEV_1/FVC ratios on pulmonary function studies administered in May 2002 and November 2004 were worse, *i.e.*, they decreased by 1%, the administrative law judge does not recognize or discuss the fact that FEV_1, FVC, and MVV results improved with the administration of bronchodilators. Moreover, as employer contends, the pulmonary function study results were only one factor in a number of factors these doctors looked at

[6] Drs. Dahhan, Rosenberg, and Baker agreed that claimant had an approximately forty year coal mine employment history and an approximately twenty pack year smoking history. Director's Exhibit 10; Employer's Exhibits 1, 2, 3, 10, 11.

in finding that claimant did not have legal pneumoconiosis. *Hess*, 7 BLR 1-295. Accordingly, I would vacate the administrative law judge's finding according little weight to the opinions of Drs. Dahhan and Rosenberg for the reasons given and remand the case for the administrative law judge to more fully consider the opinions.

Likewise, I would also vacate the administrative law judge's finding that the existence of pneumoconiosis was established based on Dr. Baker's opinion and remand the case for the administrative law judge to reconsider Dr. Baker's opinion. I agree with my colleagues that the administrative law judge erred in finding that Dr. Baker's opinion establishes the existence of clinical pneumoconiosis, as it is based solely on a positive x-ray reading and claimant's coal mine employment history, *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Milburn Colliery Coal Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998), but I do not agree that the administrative law judge acted properly in finding that Dr. Baker's opinion established the existence of legal pneumoconiosis. While Dr. Baker's opinion that claimant's chronic obstructive pulmonary disease, hypoxemia, and chronic bronchitis due to a combination of coal dust exposure and cigarette smoking meets the definition of legal pneumoconiosis, 20 C.F.R. §718.201; because, as employer contends, the doctor failed to explain how his documentation supports his finding of legal pneumoconiosis, the opinion is, in effect, based on no more documentation than his opinion of clinical pneumoconiosis, *i.e.*, x-ray and history. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*). Accordingly, I would remand the case for the administrative law judge to reevaluate the opinion of Dr. Baker. Additionally, if reached, the opinions of Drs. Dahhan, Rosenberg, and Baker must also be reconsidered on the issue of causation at Section 718.204(c).

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ROY P. SMITH
Administrative Appeals Judge