BRB No. 08-0609 BLA

W.P.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	
	)	DATE ISSUED: 06/26/2009
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 Alice M. Craft, Administrative Law Judge, United States Department of Labor.

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

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

Barry H. Joyner (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank 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, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2007-BLA-5555) of Administrative Law Judge Alice M. Craft 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). The administrative law judge credited

claimant with thirty-three years of coal mine employment, based on the parties' stipulation, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718.[1] The administrative law judge found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b). The administrative law judge determined that the medical opinions of Drs. Fino and Simpao established that claimant was totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge further found that claimant established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c)(1). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant established the existence of pneumoconiosis, asserting that she failed to consider all of the relevant evidence, including a negative x-ray reading and a negative CT scan reading. Employer asserts that the administrative law judge erred in applying the later evidence rule to resolve the conflict in the x-ray evidence at 20 C.F.R. §718.202(a)(1). Employer further contends that the administrative law judge erred in weighing the medical opinions on the issue of the existence of pneumoconiosis at 20 C.F.R. §718.204(a)(4) and disability causation at 20 C.F.R. §718.204(c). In addition, employer asserts that the administrative law judge erred in concluding that employer had withdrawn its contest of whether claimant is totally disabled pursuant to 20 C.F.R. §718.204(b). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Worker's Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's arguments that the administrative law judge erred in crediting the most recent positive x-ray as establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The Director also asserts that "to

[1] Claimant filed this claim for black lung benefits on January 24, 2003. Director's Exhibit 2. The district director issued a Proposed Decision and Order awarding benefits. Director's Exhibit 23. Employer requested a hearing, which was held on April 20, 2005, before Administrative Law Judge Robert L. Hillyard. On November 7, 2005, Judge Hillyard issued an Order of Remand, finding that the Department of Labor had failed to satisfy its obligation to provide claimant with a complete pulmonary evaluation. Director's Exhibit 31. Judge Hillyard specifically noted that Dr. Simpao had failed to adequately address whether claimant was totally disabled by a respiratory or pulmonary impairment and, if so, whether claimant's total disability was due to pneumoconiosis. *Id*. On remand, the district director obtained a supplemental report from Dr. Simpao and the case was then returned to the Office of Administrative Law Judges. Because Judge Hillyard was no longer available to hear the case, it was reassigned to Administrative Law Judge Alice M. Craft (the administrative law judge), who conducted a hearing on August 7, 2007. The administrative law judge issued her Decision and Order Awarding Benefits on April 30, 2008, which is the subject of this appeal.

the extent that Dr. Fino premised his opinion, that claimant does not have a respiratory condition due to coal-dust exposure, on the assumption that coal-dust exposure cannot cause obstruction, the administrative law judge properly gave his opinion less weight." Director's Brief at 2. Employer has filed a reply brief, asserting that the responses by claimant and the Director do not provide a reason to affirm the administrative law judge's award of benefits.

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he suffers from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, that he is totally disabled by a respiratory or pulmonary impairment, and that his total disability is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Employer challenges the administrative law judge's finding that claimant established the existence of pneumoconiosis based on the x-ray evidence at 20 C.F.R. §718.202(a)(1).[3] The administrative law judge considered eight readings of two x-rays dated April 7, 2003 and May 18, 2004. She noted that there were four positive and three negative readings for pneumoconiosis, and one quality reading.[4] Decision and Order at 11. The April 7, 2003 x-ray was interpreted by Drs. Spitz and Wiot, both dually qualified

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[2] Because claimant's coal mine employment was 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, 1-202 (1989) (*en banc*); Director's Exhibits 3, 17.

[3] We affirm, as unchallenged by the parties on appeal, the administrative law judge's finding that claimant is unable to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 9-10.

[4] Dr. Barrett, a Board-certified radiologist and B reader, read the April 7, 2003 x-ray for quality only. Director's Exhibit 11.

as Board-certified radiologists and B readers, as negative for pneumoconiosis, and by Dr. Brandon, a Board-certified radiologist and B reader, as positive for pneumoconiosis, and by Dr. Simpao, who possesses no radiological credentials, as positive for pneumoconiosis. Director's Exhibits 10, 12; Employer's Exhibit 1. Based on the "identical credentials" of Drs. Wiot, Spitz and Brandon, the administrative law judge gave greater weight to the two negative readings by the dually qualified radiologists and found that the April 7, 2003 x-ray was negative for pneumoconiosis. Decision and Order at 10.

With respect to the May 18, 2004 x-ray, the administrative law judge noted that it was interpreted by Dr. Repsher, a B reader, as negative for pneumoconiosis, and by Drs. Baker and Westerfield, both B readers, as positive for pneumoconiosis. Director's Exhibit 31; Claimant's Exhibits 1, 2. Because all of the physicians who interpreted the May 18, 2004 x-ray were equally qualified as B readers, the administrative law judge "gave greater weight to the two positive readings over the lone negative interpretation" and found that the May 18, 2004 x-ray was positive for pneumoconiosis. Decision and Order at 11. The administrative law judge found that because pneumoconiosis is a progressive and irreversible disease, the more recent positive x-ray dated May 18, 2004, was entitled to greater weight than the earlier negative x-ray dated April 7, 2003. *Id.* Therefore, the administrative law judge determined that claimant satisfied his burden to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). *Id.*

Employer contends that the administrative law judge erred by failing to address a negative reading of the May 18, 2004 x-ray by Dr. Sellers, a B reader and Board-certified radiologist. Employer's Brief at 8. We agree. The record reflects that employer submitted a negative x-ray reading, along with a negative CT scan reading, by Dr. Sellers, which were attached to Dr. Repsher's examination report and admitted into evidence at the hearing. Director's Exhibit 31-120; *see* 2007 Hearing Transcript at 6-7. The record also reflects that Dr. Sellers's x-ray and CT scan readings were not designated by employer on the Evidence Summary Form provided to the administrative law judge. The administrative law judge, however, has not resolved whether Dr. Sellers's x-ray and CT scan readings are admissible in accordance with 20 C.F.R. §725.414. That evidence, if admitted, is relevant to the issue of the existence of pneumoconiosis and, if considered, could impact the administrative law judge's finding at 20 C.F.R. §718.202(a)(1), (4). Consequently, we are compelled to vacate the administrative law judge's award of benefits and remand this case for further consideration. *See Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). If the administrative law judge determines that Dr. Sellers's x-ray reading is part of the evidentiary record, the administrative law judge must reweigh the x-ray evidence at 20 C.F.R. §718.202(a)(1) to determine whether claimant has established

the existence of pneumoconiosis under that subsection.[5] As necessary, the administrative law judge must also consider whether Dr. Sellers's CT scan reading is admissible and weigh his CT scan reading, along with the medical opinion evidence, to determine whether claimant has established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[6] *See Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006) (*en banc*)(Boggs, J., concurring); *aff'd on recon.,* 24 BLR 1-1 (2007) (*en banc*).

In the interest of judicial economy, we also will address employer's remaining arguments on appeal. Employer asserts that the administrative law judge erred in resolving the conflicting readings of each film "by relying on the numerical superiority of the witnesses." Employer's Brief at 9. Employer also contends that it was improper for the administrative law judge to give greater weight to the later positive x-ray since the two x-rays of record were taken "just over one year apart and all after [claimant's] departure from coal mine employment." *Id*. We disagree.

The administrative law judge properly performed both a qualitative and quantitative analysis of the two x-rays of record and permissibly resolved the conflict in the readings of each of the x-rays based on the qualifications of the physicians. *See Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). Furthermore, the administrative law judge permissibly concluded that the May 18, 2004 x-ray was more probative because of its recency, given that pneumoconiosis may be progressive. *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001); *see also* 65 Fed. Reg. at 79,937-79,945, 79,968-79,977 (Dec. 20, 2000); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22 (2004) (Decision

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[5] The Sixth Circuit has held that 20 C.F.R. §718.202(a)(1)-(4) provides alternative methods of establishing pneumoconiosis. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Furgerson v. Jericol Mining, Inc.*, 22 BLR 1-216, 1-226-227 (2002) (*en banc*). Therefore, because the administrative law judge found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), she was not obligated to additionally consider whether claimant established the existence of pneumoconiosis under any of the other subsections at 20 C.F.R. §718.202(a)(2)-(4).

[6] The regulations do not limit the number of separate CT scans that may be admitted into the record, *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-59 (2004)(*en banc*), but a party may proffer only one reading of each separate scan. *Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-134-135 (2006) (*en banc*)(Boggs, J., concurring); *aff'd on recon.,* 24 BLR 1-1 (2007) (*en banc*).

and Order on Reconsideration *en banc*); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29 (2004) (Decision and Order on Reconsideration *en banc*) (McGranery, J., concurring and dissenting).

Pursuant to 20 C.F.R. §718.202(a)(4), employer asserts that the administrative law judge erred in rejecting Dr. Repsher's opinion, that claimant does not have pneumoconiosis, based on his review of claimant's CT scan taken on May 18, 2004. We disagree. Dr. Repsher examined claimant at the request of employer on May 18, 2004, and obtained an x-ray, CT scan and objective testing. The administrative law judge found that Dr. Repsher's diagnosis of no pneumoconiosis was entitled to less weight at 20 C.F.R. §718.202(a)(4) because it was based, in part, on his interpretation of the May 18, 2004 CT scan, and employer failed to demonstrate that Dr. Repsher had "the knowledge, training or experience" to interpret CT scans. Decision and Order at 12. We reject employer's assertion that Dr. Repsher's credentials as a B reader establish that he is qualified to interpret CT scans as the administrative law judge permissibly found that while Dr. Repsher is a B reader, he is not a radiologist, and "there is no evidence [presented in the record] that being a B reader, requiring training and testing in reading x-rays, qualifies [Dr. Repsher] to read CT scans." Decision and Order at 12; *see* Employer's Brief at 9 n.2 Thus, because the administrative law judge rationally found that employer had not qualified Dr. Repsher as an expert in interpreting CT scans, we affirm the administrative law judge's determination to accord Dr. Repsher's diagnosis of no pneumoconiosis less weight, as it was based in part on his CT scan reading. *Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 890, 22 BLR 2-409, 2-417 (7th Cir. 2002); *see Webber,* 23 BLR at 1-136; *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*) (determining credibility of medical experts is within the discretion of the administrative law judge).

Employer also argues that the administrative law judge erred in failing to explain the basis for the weight she accorded the conflicting opinions of Drs. Simpao and Fino regarding the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).[7] Dr. Simpao

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[7] 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 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 the terms of 20 C.F.R. §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

opined that claimant's "[thirty-one] years of underground coal mining is the significant contributing factor in his pulmonary condition," and stated that claimant's "smoking history and brief employment in other dusty occupation[s] . . . are aggravating factors in his pulmonary impairment." Director's Exhibit 31-2. Although the administrative law judge stated that she found Dr. Simpao's diagnosis of clinical pneumoconiosis to be "undermined by the fact that I have found the x-ray he relied upon to be negative for pneumoconiosis," she also concluded that Dr. Simpao's diagnosis of clinical pneumoconiosis was corroborated by the more recent positive x-ray. Decision and Order at 12. The administrative law judge also found that "Dr. Simpao's attribution of the [c]laimant's legal pneumoconiosis to a combination of factors is consistent with the regulations, and sufficient to meet the requirement that coal dust be a contributing cause to the [c]laimant's impairment for such a diagnosis." *Id*.

Because we are remanding this case to the administrative law judge with instructions to reweigh the x-ray evidence, we also must vacate the administrative law judge's finding that Dr. Simpao's diagnosis of clinical pneumoconiosis is corroborated by the x-ray evidence. Regarding the administrative law judge's finding of legal pneumoconiosis, employer asserts that the administrative law judge's rationale for crediting Dr. Simpao's diagnosis is flawed. Employer notes that "consistency with the regulations is hardly a reason to credit Dr. Simpao's opinion . . . since [t]he regulations do not provide reasoning or support for a medical opinion." Employer's Brief at 14. We agree with employer that the administrative law judge has failed to consider whether Dr. Simpao's diagnosis of legal pneumoconiosis is reasoned and documented, taking into consideration the objective evidence, underlying documentation and rationale provided by Dr. Simpao in support of his opinion. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985); Employer's Brief at 12-13.

Additionally, employer contends that the administrative law judge erred in finding that Dr. Fino's opinion, that claimant does not have a respiratory condition due to coal dust exposure, was "contrary to the principles underlying the regulations." Employer's Brief at 16, citing Decision and Order at 13. We agree. Although the administrative law judge found that Dr. Fino "took the position that coal dust does not cause a clinically significant contribution to obstructive disease," the administrative law judge did not specifically cite to any statements by Dr. Fino to support the administrative law judge's conclusion. Decision and Order at 13. As such, the administrative law judge's credibility findings with regard to Dr. Fino's opinion fail to satisfy the requirements of

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impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

the Administrative Procedure Act (APA).[8] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

We also find merit in employer's contention that the administrative law judge improperly shifted the burden of proof to employer to disprove that claimant's respiratory condition is due to coal dust exposure. *See Williams*, 338 F.3d at 514, 22 BLR at 2-648-49. Dr. Repsher diagnosed mild chronic obstructive pulmonary disease due to smoking and Dr. Fino diagnosed a disabling obstructive pulmonary disease due to smoking. Employer's Exhibits 31-83, 31-116. The administrative law judge found that Dr. Repsher "offered no explanation why he excluded coal dust as a contributing factor to the [c]laimant's obstructive disease," and that Dr. Fino "focused on the presence or absence of clinical pneumoconiosis." Decision and Order at 12-13. The administrative law judge further found that neither Dr. Repsher nor Dr. Fino "convincingly ruled out coal dust exposure as a contributing cause to the [c]laimant's pulmonary disease" or "adequately explained why [thirty-three] years of coal dust exposure was not a factor in [claimant's] obstructive disease." Decision and Order at 13. Contrary to the administrative law judge's analysis, however, claimant has the burden to establish that he suffers from a respiratory condition that satisfies the definition of pneumoconiosis at 20 C.F.R. §718.201 by a preponderance of the evidence. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994).

For the above-stated reasons, we vacate the administrative law judge's finding that claimant established the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(4), and remand this case to the administrative law judge for reconsideration of this issue. In light of our decision to vacate the administrative law judge's finding that claimant established the existence of pneumoconiosis, we must also vacate her finding that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). *See* Decision and Order at 13. Furthermore, to the extent that the administrative law judge rejected Dr. Fino's opinion, that claimant is not totally disabled by pneumoconiosis, because she found that it "rest[ed] upon his disagreement with [the administrative law judge's] finding that [claimant] has clinical and legal pneumoconiosis," we also vacate the administrative law judge's finding that claimant established total disability due to pneumoconiosis based on Dr. Simpao's opinion, pursuant to 20 C.F.R. §718.204(c). *Id*. at 14.

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[8] The Administrative Procedure Act requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Finally, employer asserts that the administrative law judge erred in finding that employer had withdrawn total disability as a contested issue in this case. Employer's Brief at 16; Decision and Order at 13. We reject employer's assertion as it is not supported by the record. At a hearing held on June 18, 2004, before Administrative Law Judge Robert L. Hillyard with respect to this claim, counsel for employer stated that "[b]ased upon medical evidence, I will also withdraw contested issue number seven involving [claimant] being totally disabled from a respiratory standpoint." Director's Exhibit 31-41 (2005 Hearing Transcript at 11). Judge Hillyard then noted for the record that employer's "controversion [was] withdrawn to issue number seven, total disability." *Id*. Prior to issuing a Decision and Order, Judge Hillyard remanded the case to the district director in order for the Department of Labor to satisfy its obligation to provide claimant with a complete pulmonary evaluation. Order of Remand dated June 8, 2004. In her Decision and Order, the administrative law judge acknowledged that employer had withdrawn its contest of the issue of whether claimant was totally disabled at the 2005 hearing before Judge Hillyard, but also acknowledged that, due to a clerical error, the issue of total disability was still marked as a contested issue on the Form CM-1025, when the case file was returned to the Office of Administrative Law Judges, following Judge Hillyard's Order of Remand. Decision and Order at 3, Director's Exhibit 32. Thus, based on the facts of this case, we reject employer's argument, and affirm the administrative law judge's finding that employer withdrew its contest of the issue of whether claimant is totally disabled. *See* 20 C.F.R. §§725.462, 725.463; *Big Horn Coal Co. v. Director, OWCP* [*Madia*], 55 F.3d 545, 19 BLR 2-209 (10th Cir. 1990); *Grant v. Director, OWCP*, 6 BLR 1-619 (1983).[9]

To summarize, the administrative law judge is instructed on remand to consider whether the x-ray and CT scan readings by Dr. Sellers are admissible pursuant to 20 C.F.R. §725.414. Thereafter, as necessary, the administrative law judge must reconsider

[9] The administrative law judge also specifically found that, despite the non-qualifying pulmonary function and arterial blood gas study evidence, a finding of total disability was established by the medical opinions of Drs. Simpao and Fino, who opined that claimant is totally disabled from performing his usual coal mine work. Decision and Order at 13. Employer challenges the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b)(2), asserting that she did not properly address the exertional requirements of claimant's last coal mine job in assessing the credibility of the opinions of Drs. Simpao and Fino on the issue of total disability. Employer's Brief at 16-18. However, because we have affirmed the administrative law judge's finding that the issue of total disability was withdrawn by employer's counsel at the 2005 hearing before Judge Hillyard in this case, it is not necessary that we address employer's assertion that the administrative law judge erred in finding that claimant established total disability based on the medical opinion evidence.

whether claimant has established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) or (a)(4). In addressing the issue of whether claimant has established the existence of clinical or legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), as applicable, the administrative law judge must address whether each physician's opinion is reasoned and documented, and explain the basis for her findings of fact and conclusions of law in accordance with the APA.[10] *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark*, 12 BLR at 1-155. The administrative law judge must also consider the CT scan evidence relevant to whether claimant has pneumoconiosis. If the administrative law judge finds that claimant has satisfied his burden of proving the existence of pneumoconiosis, the administrative law judge must then determine whether claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge must also render findings as to whether claimant established that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).

[10] A "reasoned" opinion is one in which the underlying documentation is adequate to support the physician's conclusions. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). A "documented" opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Id*.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge