BRB No. 08-0676 BLA

B.D.B.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BRANHAM & BAKER COAL COMPANY	)	
	)	
and	)	
	)	
GENERAL RECOVERY, INCORPORATED	)	DATE ISSUED: 06/24/2009
	)	
Employer/Carrier- Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Citizens Law Center, Inc.), Whitesburg, Kentucky, for claimant.

Todd P. Kennedy (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer/carrier.

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, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order – Denial of Benefits (05-BLA-5200) of Administrative Law Judge Thomas F. Phalen, Jr. on a claim[1] 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 found that claimant had 13.60 years of coal mine employment. Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that while claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b), he failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in admitting Dr. Baker's 2006 supplemental medical report, which was submitted by employer, into evidence. Claimant contends that this supplemental report should not have been admitted into evidence because it exceeded the evidentiary limitations set forth in 20 C.F.R. §725.414(a)(2)(i), and because the administrative law judge erred in finding that good cause existed for its admission. Claimant also argues that the administrative law judge failed to consider all of claimant's qualifying coal mine employment in finding that 13.60 years of coal mine employment were established. Additionally, claimant argues that the administrative law judge erred in finding that the medical opinion evidence failed to establish pneumoconiosis pursuant to Section 718.202(a)(4). Lastly, claimant argues that if the Board holds that the administrative law judge properly rejected the opinion of Dr. Mettu on the issue of pneumoconiosis as unreasoned, the Director, Office of Workers' Compensation Programs (the Director), has failed to satisfy his statutory obligation to provide claimant with a complete, credible pulmonary evaluation sufficient to substantiate his claim under Section 413(b) of the Act, 30 U.S.C. §923(b). In response, employer/carrier urges affirmance of the administrative law judge's decision denying benefits. The Director responds, averring that any error made by the administrative law judge in admitting Dr. Baker's 2006 supplemental report is harmless inasmuch as employer had a right to cross-examine Dr. Baker, and Dr. Baker's 2006 supplemental report contains information that would have been elicited on cross-examination. The Director, however, agrees with claimant that the administrative law judge erred in analyzing the medical opinions of Drs. Baker, Mettu, and Dahhan and in finding that this medical opinion evidence failed to establish pneumoconiosis under Section 718.202(a)(4). The Director, therefore, agrees with claimant that the case must be remanded for reconsideration of the medical opinion evidence at Section 718.202(a)(4).

---

[1] Claimant filed his application for benefits on January 9, 2003. Director's Exhibit 2.

The Director disagrees, however, that he has failed to satisfy his obligation of providing claimant with a complete pulmonary evaluation under the Act. Rather, the Director contends that Dr. Mettu's opinion, on the issue of pneumoconiosis, is adequate to satisfy his statutory obligation.[2]

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, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed.[3] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish 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; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Claimant first argues that the administrative law judge erred in admitting Dr. Baker's 2006 supplemental report into evidence under the good cause exception to the evidentiary limitations set forth in Section 725.414(a). 20 C.F.R. §725.456(b)(1). Claimant contends that the record does not support the administrative law judge's finding that Dr. Baker needed to supplement his initial 2005 report. Rather, claimant contends that the only basis for the supplemental report was employer's question to Dr. Baker as to whether, assuming a coal mine employment history of eight years, rather than the ten years noted in his original report, Dr. Baker would still find pneumoconiosis. In response to this question, Dr. Baker opined that if claimant had only eight years of coal mine employment, it was less likely that exposure to coal mine dust was the cause of changes seen on claimant's x-ray and the cause of claimant's obstructive airways disease. Claimant argues that since the administrative law judge found a coal mine employment

---

[2] We affirm the administrative law judge's finding that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b), but failed to establish pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), as these findings are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 15-16, 20.

[3] We will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in coal mining in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

history of 13.60 years established, and Dr. Baker initially found pneumoconiosis based, in part, on his finding of ten years of coal mine employment, there was no reason for employer to ask Dr. Baker to supplement his report based on an assumption of a shorter history of coal mine employment. Thus, claimant contends that the administrative law judge never explained why it was necessary for Dr. Baker to supplement his original medical report and the record does not support the administrative law judge's finding that good cause existed for the admission of Dr. Baker's supplemental medical report.

In response, the Director states that since Dr. Baker's initial 2005 report was submitted by claimant, employer was entitled to cross-examine Dr. Baker, by deposition or any other means pursuant to 20 C.F.R. §725.459(b). Therefore, the Director asserts that any error made by the administrative law judge in admitting Dr. Baker's 2006 supplemental report for good cause was ultimately harmless because the information elicited from Dr. Baker in the supplemental report was the same type of information that could have been obtained as a result of cross-examination.

In the initial 2005 report submitted by claimant, Dr. Baker, relying in part on a ten-year coal mine employment history, diagnosed coal workers' pneumoconiosis, chronic obstructive pulmonary disease, and chronic bronchitis due to both coal dust exposure and cigarette smoking. Claimant's Exhibit 3. In the 2006 supplemental report submitted by employer, Dr. Baker opined that, "with less than 10 years of exposure and closer to 8 years, it is felt that [claimant's] x-ray changes would probably not be due to coal dust and be due to some other condition." Employer's Exhibit 9.

The administrative law judge found that Dr. Baker's 2006 supplemental report exceeded the evidentiary limitations and, absent good cause, was inadmissible as exceeding the evidentiary limits at Section 725.414. The administrative law judge concluded, however, that "sufficient justification for the consideration of Dr. Baker's [supplemental] report" existed, based "on the fact that [c]laimant submitted Dr. Baker's 2005 report as affirmative evidence to support his claim for benefits." Decision and Order at 7. The administrative law judge concluded:

> If Dr. Baker has subsequently found it necessary to provide further clarification in a subsequent report, I find that it is proper to take this evidence into consideration in this adjudication. Therefore, I find that good cause exists for the consideration of Dr. Baker's January 2006 supplemental report.

Id. at 7.

It is well-established that a party must be provided an opportunity to respond to medical reports submitted into the record by the opposing party or to cross-examine the physicians who prepared the reports. *North American Coal Co. v. Miller*, 870 F.2d 948, 12 BLR 2-222 (3d Cir. 1989); *Marx v. Director, OWCP*, 870 F.2d 114, 12 BLR 2-199 (3d Cir. 1989); *Fowler v. Freeman United Coal Co.*, 7 BLR 1-495, *aff'd sub nom. Freeman United Coal Mining Co. v. Director, OWCP,* No. 85-1013 (7th Cir. Jan. 24, 1986) (unpub.). Thus, because employer is entitled to cross-examine claimant's physicians, by deposition or other means, the administrative law judge properly admitted Dr. Baker's 2006 supplemental report into the record. *See L.P.* (*Widow of C.P.*) *v. Amherst Coal Co.*, 24 BLR 1-55 (2008) (*recon. en banc*); Decision and Order at 7. Accordingly, we affirm the administrative law judge's admission of Dr. Baker's supplemental opinion into the record.

Claimant next contends that the administrative law judge failed to make a reasoned determination on the issue of the length of his coal mine employment. Specifically, claimant contends that the administrative law judge erred in finding 13.60 years of coal mine employment established because he failed to make a clear and reasoned determination as to whether "[c]laimant's employment from 1981 through 1994 at Mountain Pipelines was coal mine employment." Claimant's Petition for Review and Brief at 21. Thus, claimant contends that, because the administrative law judge's finding on the length of coal mine employment is incomplete, the determination should be vacated and the case remanded for further consideration on this issue. Claimant's argument has merit.

In addressing the length of coal mine employment, the administrative law judge noted that claimant alleged thirty-seven years of coal mine employment and that the district director credited claimant with at least 8.46 years of qualifying coal mine employment. After charting claimant's earnings, as recorded in the Social Security earnings report for employment between 1975 to 1979 and 1994 to 2002, the administrative law judge credited claimant's testimony, as corroborated by the Social Security earnings report, that he was employed with B&B Engineering from 1975 to 1979 and Mountain Pipeline from 1981 to 1994. Hence, based on claimant's testimony, his Social Security earnings records, and a table utilized by the Department of Labor to "calculate the Claimant's employment history with B & B Engineers and Mountain Pipeline," the administrative law judge "found that Claimant's length of coal mine employment is 13.60 years, or thirteen years and seven months." Decision and Order at 5. Thus, while the administrative law judge stated that he credited claimant's employment from 1981 to 1994 with Mountain Pipeline, this thirteen-year period was not included in the chart utilized by the administrative law judge to calculate claimant's length of coal mine employment, *i.e.*, the chart indicates claimant's earnings only for time periods from 1975 to 1979 and from 1994 to 2002. Because it is unclear from the administrative law judge's discussion whether any of claimant's employment with

Mountain Pipeline between 1981 and 1994 constituted qualifying coal mine employment, we vacate the administrative law judge's determination of 13.60 years of coal mine employment and remand the case for further consideration of the issue. *See Dawson v. Old Ben Coal Co.*, 11 BLR 1-58 (1988); *see generally Tressler v. Allen & Garcia Co.*, 8 BLR 1-365, 1-368 (1985) (administrative law judge's computation of time will be upheld provided that it is based on reasonable method and supported by substantial evidence); *Brewster v. Director,* OWCP, 7 BLR 1-120, 1-121-122 (1984); Decision and Order at 4-5.

Claimant also argues that the administrative law judge erred in his consideration of the medical opinions of Drs. Baker, Mettu and Dahhan and, therefore, erred in concluding that the medical opinion evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). For the sake of clarity, we address the opinions *seriatim*.

Claimant first contends that the administrative law judge erred in discounting Dr. Baker's 2005 opinion finding pneumoconiosis as unsupported since, claimant argues, in addition to length of coal mine employment, Dr. Baker relied on claimant's medical, smoking and coal mine employment histories, his examination of claimant, and the results of objective testing. Claimant also contends that the administrative law judge erred in finding that Dr. Baker's 2006 opinion was equivocal. In response, the Director agrees with claimant that the administrative law judge erred in according little weight to Dr. Baker's 2005 opinion because it was unsupported and little weight to Dr. Baker's 2006 supplemental opinion because it was equivocal. The Director contends that, contrary to the administrative law judge's determination, Dr. Baker clearly relied on objective test results, in addition to length of coal mine employment, in making his overall diagnosis of pneumoconiosis.[4]

In his 2005 opinion, Dr. Baker found, based in part on claimant's coal mine employment history of ten years, that claimant's chronic obstructive pulmonary disease (COPD), chronic bronchitis, and hypoxemia were caused by a combination of coal dust exposure and cigarette smoking. In his subsequent 2006 opinion, however, Dr. Baker opined, in response to employer's question, that if claimant had only eight years of coal mine employment, he had neither legal nor clinical pneumoconiosis. Based on the change in his opinion resulting from changed length of coal mine employment information, the administrative law judge concluded that it was clear that Dr. Baker's

[4] However, citing *Addison v. Director, OWCP*, 11 BLR 1-68, 1-69-70 (1988), the Director, Office Workers' Compensation Programs, contends that Dr. Baker's supplemental opinion should, in any case, be discounted because it is based on an inaccurate length of coal mine employment. Director's Brief at 5 n.5.

opinion regarding pneumoconiosis was based primarily on length of coal mine employment, and not any specific objective test results. Accordingly, the administrative law judge assigned the opinion little weight because it was unsupported. In addition, the administrative law judge found that Dr. Baker's 2006 supplemental opinion, that coal dust exposure is, "probably less likely to be a possible partial etiology of [c]laimant's pulmonary condition," given fewer years of coal mine employment, was equivocal. *See* Decision and Order at 17.

We agree with claimant and the Director that the administrative law judge's attribution of less weight to Dr. Baker's 2005 pneumoconiosis finding, because it was based primarily on claimant's length of coal mine dust exposure, is not supported by the record. Dr. Baker's 2005 report was based on a physical examination, a positive chest x-ray, a qualifying pulmonary function study, and an arterial blood gas study indicating mild resting arterial hypoxemia, in addition to medical, smoking and employment histories. Claimant's Exhibit 3. Consequently, we conclude that the administrative law judge improperly characterized Dr. Baker's 2005 report as being based primarily on claimant's length of coal mine employment, without addressing the additional factors on which the opinion was based. *See Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985). Further, we conclude that Dr. Baker's 2006 opinion must be considered in light of the prior 2005 opinion, since Dr. Baker stated that it was based in part on his prior findings.[5] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*). Accordingly, the administrative law judge's findings regarding these two opinions are vacated, and the case is remanded for the administrative law judge to reconsider the opinions together.

Turning to Dr. Mettu's opinion, that claimant's coal dust exposure was a cause of his COPD, claimant avers that the administrative law judge erred in according it little weight by substituting his own judgment for that of the doctor, and erred in finding Dr. Mettu's opinion equivocal, unsupported and not well-reasoned on the issue of pneumoconiosis. The Director contends that, contrary to the administrative law judge's finding, Dr. Mettu's opinion, when read in its entirety, is not equivocal, as Dr. Mettu explained why he attributes claimant's respiratory impairment, in part, to coal dust exposure. Specifically, the Director contends that Dr. Mettu, in his original report and deposition testimony, directly opined that coal dust exposure is one of the causes of claimant's chronic bronchitis, even though he acknowledged that it is very difficult to distinguish between the effects of claimant's coal dust exposure, cigarette smoking, and welding fumes exposure. Thus, the Director contends that, even though Dr. Mettu's opinion contains some uncertainty about the specific degree of contribution of coal dust,

[5] Dr. Baker's opinion consists of a November 22, 2005 report and a January 23, 2006 supplemental report.

welding fumes, and cigarette smoking to claimant's respiratory impairment, this uncertainty does not undermine Dr. Mettu's opinion.

The regulations specifically provide that a miner's pulmonary impairment must be "significantly related to" or "substantially aggravated by" exposure to coal dust, in order to establish the existence of legal pneumoconiosis. However, a miner need not demonstrate that his coal mine dust exposure was the sole or even primary cause of his respiratory impairment. 20 C.F.R. §718.201(a), (b); *see generally Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000) (miner was not required to demonstrate that coal dust was the only cause of his current respiratory problems); *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 2-372 (4th Cir. 2006) (physicians are not required to determine the precise percentage of a miner's lung obstruction that is attributable to cigarette smoke and coal mine dust exposure). While it is well established that "the meaning of an ambiguous word or phrase and the weight to give the testimony of an uncertain witness are questions for the trier of fact," it is also true that "a reasoned medical opinion is not rendered a nullity because it acknowledges the limits of reasoned medical opinions." *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763-764, 21 BLR 2-587, 2-605-606 (4th Cir. 1999).

In his initial report, dated February 25, 2003, Dr. Mettu diagnosed chronic bronchitis due to claimant's coal mine employment and cigarette smoking. Director's Exhibit 11. In subsequent reports dated March 19, 2004 and August 5, 2004, Dr. Mettu unequivocally opined that the causes of claimant's severe obstructive pulmonary impairment are pneumoconiosis and cigarette smoking. Director's Exhibits 15, 17. During his deposition on December 21, 2005, Dr. Mettu was asked, on cross-examination, to provide a definitive answer as to whether smoking, welding fumes, or coal dust caused claimant's respiratory impairment. Dr. Mettu replied that they all "could have," but that it was difficult to differentiate the level of contribution made by each. Claimant's Exhibit 7 at 22, 26-27, 48-50.

The administrative law judge gave little weight to Dr. Mettu's diagnosis that claimant's chronic bronchitis was caused, in part, by coal mine employment because it was equivocal and unsupported. Specifically, the administrative law judge stated that Dr. Mettu "provide[d] absolutely no support for his conclusion that Claimant's pulmonary condition was significantly caused by coal dust exposure, and not solely the result of a 20-year welding history or his 27-pack year smoking history." Decision and Order at 17.

A review of the record shows that Dr. Mettu explained that claimant's cigarette smoking and coal mine dust exposure were the causes of his chronic bronchitis and severe obstructive lung disease, given his significant cigarette smoking history and the duration of his coal mine employment history. Therefore, contrary to the administrative

law judge's determination, Dr. Mettu provided explanations for his opinion.[6] *See Tackett*, 7 BLR at 1-706. Further, the administrative law judge's finding that Dr. Mettu's opinion was equivocal, based on the physician's failure to specifically apportion claimant's respiratory impairment to coal mine dust exposure, cigarette smoking, and welding fume exposure is not a proper basis upon which to discredit the report. *See Williams*, 453 F.3d at 622, 23 BLR at 2-372; *Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Summers v. Freeman United Coal Mining Co.*, 14 F.3d 1220, 18 BLR 2-105 (7th Cir. 1994). Accordingly, we vacate the administrative law judge's assignment of little weight to Dr. Mettu's opinion for the reasons given and remand the case for the administrative law judge to reconsider the opinion.

With respect to Dr. Dahhan's opinion, that claimant's respiratory impairment was due entirely to cigarette smoking and that coal dust exposure was non-contributory, claimant argues that the administrative law judge erred in relying on it to find that claimant failed to establish pneumoconiosis under Section 718.202(a)(4). The administrative law judge credited Dr. Dahhan's opinion because Dr. Dahhan noted that claimant's respiratory impairment improved in response to bronchodilator treatment, which is inconsistent with the permanent adverse effects of coal mine dust exposure, and because Dr. Dahhan stated that the severe and disabling respiratory impairment that claimant had was not seen without evidence of complicated pneumoconiosis or progressive massive fibrosis. The administrative law judge further concluded that Dr. Dahhan's opinion was adequately supported by the objective evidence he considered, was sufficiently focused on claimant's specific condition, and was bolstered by Dr. Dahhan's advanced credentials.[7]

Claimant contends that the reasons given by the administrative law judge for crediting Dr. Dahhan's opinion do not withstand scrutiny because Dr. Dahhan did not cite to any medical authority to support his opinion that improvement with bronchodilator treatment rules out coal mine dust exposure as a significant or aggravating cause of

[6] Dr. Mettu specifically stated that whether claimant had thirty-five or eight years of coal mine employment, his coal mine dust exposure was a significant contributing cause of his respiratory impairment. *See* Claimant's Exhibits 5, 7; Director's Exhibits 11, 15, 17.

[7] The administrative law judge noted that Dr. Dahhan had advanced credentials because he was both an internist and a pulmonologist. Decision and Order at 18. We observe, however, that the administrative law judge also noted that both Drs. Mettu and Baker, were internists and pulmonologists. Decision and Order at 9-10.

respiratory impairment.[8] Claimant also contends that the administrative law judge erred in relying on Dr. Dahhan's opinion because claimant did not have to prove the existence of complicated pneumoconiosis or progressive massive fibrosis in order to show that coal mine dust exposure is a cause of his severe disabling respiratory impairment. The Director agrees with claimant's contentions.

As claimant and the Director contend, because the administrative law judge gave invalid reasons for relying on Dr. Dahhan's opinion, we vacate the administrative law judge's crediting of Dr. Dahhan's opinion and remand the case for the administrative law judge to reconsider Dr. Dahhan's opinion, including the bases for his conclusions. *See generally Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007) (holding administrative law judge properly rejected Dr. Dahhan's opinion because, *inter alia,* the doctor had not adequately explained why the miner's responsiveness to bronchodilators necessarily eliminated a finding of legal pneumoconiosis); *see also Peabody Coal Co. v. Holskey*, 888 F.2d 440, 13 BLR 2-95 (6th Cir. 1989) (chronic obstructive lung disease arising out of coal mine employment may constitute legal pneumoconiosis); *Adams v. Peabody Coal Co.*, 816 F.2d 1116, 10 BLR 2-69 (6th Cir. 1987) (belief that simple pneumoconiosis is never disabling may constitute grounds for rejecting that physician's opinion). In light of our decision to vacate the administrative law judge's findings regarding the medical opinions of Drs. Baker, Mettu, and Dahhan, we vacate the administrative law judge's determination that claimant failed to establish pneumoconiosis under Section 718.202(a)(4) and remand the case for the administrative law judge to reconsider the opinions thereunder.

Lastly, claimant contends that because the administrative law judge rejected Dr. Mettu's opinion as unreasoned, the case must be remanded so that the Director can provide claimant with a complete, credible pulmonary evaluation. Claimant contends that the administrative law judge's use of Dr. Dahhan's opinion, which was submitted by employer, to satisfy the Director's obligation on the issue of pneumoconiosis is impermissible. *See* 20 C.F.R. §725.406. In response, the Director contends that Dr. Mettu's opinion is, in fact, reasoned, documented, and complete on the issue of pneumoconiosis and that the Director has, therefore, provided claimant with a complete pulmonary evaluation.

---

[8] Moreover, claimant asserts that Dr. Dahhan's reliance on the improvement shown by claimant in his post-bronchodilator pulmonary function studies as evidence that claimant did not have pneumoconiosis is irrational in any case, because while claimant demonstrated slight improvement, the post-bronchodilator tests still yielded qualifying values.

In determining whether the Director satisfied his obligation to provide claimant with a complete, pulmonary evaluation, the administrative law judge found that Dr. Mettu's opinion on pneumoconiosis was unreasoned and that "his report, standing alone, is insufficient to constitute an opportunity to substantiate this claim." Decision and Order at 21. However, the administrative law judge went on to find that Dr. Dahhan's opinion was well-reasoned and well-documented and, therefore, provided sufficient evidence on which to make a determination as to the existence of pneumoconiosis. The administrative law judge concluded that because Dr. Dahhan's opinion sufficiently addressed the issue of pneumoconiosis, it was not necessary to remand the case to the district director to provide claimant with a complete, credible pulmonary evaluation.

At the outset we note that the administrative law judge cannot use Dr. Dahhan's opinion as a substitute for Dr. Mettu's Department of Labor (DOL)-sponsored opinion. However, we agree with the Director that he is not required to give claimant a dispositive opinion, and that he has satisfied his statutory obligation of providing claimant with a complete pulmonary evaluation if the pulmonary evaluation provided by the DOL addresses the elements of entitlement. *See* 20 C.F.R. §§725.405, 725.406; *Barnes v. ICO Corp.*, 31 F.3d 673, 18 BLR 2-319 (8th Cir. 1994); *Cline v. Director, OWCP*, 917 F.2d 9, 11, 14 BLR 2-102, 2-105 (8th Cir. 1990); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984).

In conclusion, we vacate the administrative law judge's denial of benefits. On remand, the administrative law judge must reconsider the relevant evidence to determine claimant's length of coal mine employment. Also, the administrative law judge must reconsider whether the medical opinion evidence establishes the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and, if reached, whether the pneumoconiosis arose out of coal mine employment pursuant to Section 718.203(b). If the administrative law judge finds that claimant has established pneumoconiosis arising out of coal mine employment, he must then determine whether claimant's total disability is due to pneumoconiosis pursuant to Section 718.204(c).

Accordingly, the Decision and Order - Denial of Benefits of the administrative law judge is affirmed in part, vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge