BRB No. 09-0708 BLA

VIRGIE BUCKLEY (o/b/o and Widow of GARY BUCKLEY) Claimant-Respondent v. TEE ENGINEERING COMPANY, INCORPORATED and LIBERTY MUTUAL INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/23/2010 DECISION and ORDER

Appeal of the Decision and Order of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

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

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer/carrier.

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

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

PER CURIAM:

Employer appeals the Decision and Order (07-BLA-5619) of Administrative Law Judge Larry S. Merck awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*))(the Act). This case involves a miner's request for modification of the denial of a subsequent claim filed on September 6, 2001.[1] In the initial Decision and Order, Administrative Law Judge Thomas F. Phalen, Jr. credited the miner with 25.95 years of coal mine employment,[2] and found that the new biopsy evidence established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), thereby establishing that one of the applicable conditions of entitlement had changed since the date upon which the denial of the miner's prior claim became final. 20 C.F.R. §725.309(d). Consequently, Judge Phalen considered the miner's 2001 claim on the merits. Based upon a consideration of all the evidence of record, Judge Phalen found that the biopsy evidence established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2).[3] After finding that the miner was entitled to the presumption that his clinical pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), Judge Phalen found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b). However, Judge Phalen found that the evidence did not establish that the miner's total disability was due to clinical pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, Judge Phalen denied benefits.

[1] The miner initially filed a claim for benefits on August 28, 1997. Director's Exhibit 1. The district director denied the claim on December 29, 1997 because the miner did not establish any of the elements of entitlement. *Id.* There is no indication that the miner took any further action in regard to his 1997 claim.

[2] The record reflects that the miner's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, 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*).

[3] Administrative Law Judge Thomas F. Phalen, Jr., found that the evidence did not establish the existence of clinical and/or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (3), (4).

The miner requested modification on November 20, 2006.[4] Director's Exhibit 89. In a Decision and Order dated June 2, 2009, Administrative Law Judge Larry S. Merck (the administrative law judge) found that the new biopsy, autopsy, and medical opinion evidence submitted since the denial of the miner's 1997 claim established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (4). The administrative law judge found that the new medical opinion evidence also established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge, therefore, found that the miner established a change in an applicable condition of entitlement pursuant to 20 C.F.R §725.309(d), as well as a change in conditions pursuant to 20 C.F.R. §725.310. In his consideration of the merits of the miner's 2001 claim, the administrative law judge found that the biopsy, autopsy and medical opinion evidence established clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (4). The administrative law judge also found that the medical opinion evidence established legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). After finding that the miner was entitled to the presumption that his clinical pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), the administrative law judge found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b). The administrative law judge also found that the evidence established that the miner's total disability was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c).[5] Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in allowing the miner to submit evidence in excess of the evidentiary limitations. Employer also argues that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and that the miner's total disability was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief.[6]

---

[4] The miner died on June 25, 2007. Hearing Transcript at 16. Claimant, the miner's widow and executrix of the miner's estate, is pursuing the miner's claim.

[5] The administrative law judge found that the evidence did not establish that the miner's total disability was due to clinical pneumoconiosis.

[6] Because employer does not challenge the administrative law judge's findings that the miner established a change in an applicable condition of entitlement pursuant to 20 C.F.R §725.309(d), and a change in conditions pursuant to 20 C.F.R. §725.310, these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). We similarly affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b).

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

In order to establish entitlement to benefits under Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 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*).

Impact of the Recent Amendments

By Order dated April 9, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims.[7] Employer and the Director have responded.

The Director correctly states that the recent amendments to the Act, which became effective on March 23, 2010, and which apply to claims filed after January 1, 2005, do not apply to the miner's claim because it was filed before January 1, 2005.

Admission of Evidence

Employer initially argues that the administrative law judge erred in allowing the miner to submit more than one additional report in support of his request for modification. Because the miner submitted Dr. Forehand's July 10, 2006 medical report in support of his request for modification, employer argues that the miner should not have been permitted to also submit Dr. Green's May 1, 2008 medical report. We disagree. Sections 725.414 and 725.310(b) apply to claims filed after January 19, 2001, and establish combined evidentiary limitations on modification. *See* 20 C.F.R. §§725.2(c), 725.414, 725.310(b); *Rose v. Buffalo Mining Co.*, 23 BLR 1-221, 1-227 (2007). The

[7] Section 1556 reinstated Section 411(c)(4) of the Act, which provides that, if a miner had at least fifteen years of qualifying coal mine employment, and if the evidence establishes the presence of a totally disabling respiratory impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time his death, he was totally disabled by pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)).

applicable provisions permit the miner to submit two medical reports in support of his affirmative case, pursuant to 20 C.F.R. §725.414(a)(2)(i), and one medical report on modification, pursuant to 20 C.F.R. §725.310(b). A showing of "good cause" is required to exceed those limits. 20 C.F.R. §725.456(b)(1).

When his 2001 claim was before Judge Phalen, the miner did not submit any medical reports in support of his affirmative case.[8] In support of his modification request, the miner submitted Dr. Forehand's July 10, 2006 medical report, as well as Dr. Green's May 1, 2008 and November 7, 2008 medical reports. Director's Exhibit 91; Claimant's Exhibits 1, 4, 5. Because the miner was entitled to submit a total of three medical reports (two medical reports in support of his affirmative case, and one additional medical report on modification), the administrative law judge permissibly admitted these three medical reports into the record.[9] *See Rose*, 23 BLR at 1-227-28; 20 C.F.R. §§725.414(a)(2)(i), (ii), 725.310(b).

We also reject employer's contention that the administrative law judge erred in considering the pathology reports of Dr. Green in connection with the miner's claim. Employer asserts that Dr. Green's opinions are irrelevant to the miner's claim because the physician's opinions are based, in part, upon autopsy findings. Employer's Brief at 21. Employer cites no authority for its position that an administrative law judge may not consider autopsy evidence in considering a miner's entitlement to benefits. In this case, Dr. Green addressed the cause of the miner's lung disease and its contribution to the miner's totally disabling respiratory impairment. Claimant's Exhibits 1, 4. Consequently, Dr. Green's opinions are relevant to the issues before the administrative law judge in the miner's claim.

[8] When the case was previously before Judge Phalen, the miner limited his submission of evidence to hospital records from the University of Kentucky Medical Center, specifically, records concerning a right thoracotomy on May 14, 2004. Director's Exhibit 57. A miner's hospitalization and treatment records are not subject to the evidentiary limitations. 20 C.F.R. §725.414(a)(4).

[9] Because Dr. Green also reviewed the miner's biopsy and autopsy slides, the administrative law judge admitted Dr. Green's May 1, 2008 report as a biopsy report and an autopsy report, as well as a medical report. Decision and Order at 13 n.8; *see* 20 C.F.R. §725.414(a)(2)(i). The administrative law judge noted that Dr. Green's report contains separate sections for his opinions regarding the biopsy slide and autopsy slide evidence. Decision and Order at 13 n.8. Consequently, the administrative law judge confined his consideration of Dr. Green's opinion to these sections in his weighing of the biopsy and autopsy evidence at 20 C.F.R. §718.202(a)(2).

Employer also contends that the administrative law judge erred in not admitting Dr. Caffrey's September 23, 2008 report as one of employer's "medical reports." In his 2008 report, Dr. Caffrey reviewed the miner's biopsy and autopsy slides, along with other medical evidence of record. Employer's Exhibit 3. Although Dr. Caffrey's 2008 report could constitute a "medical report," employer had already submitted two medical reports in support of its affirmative case (the reports of Drs. Dahhan and Broudy), as well as one additional medical report on modification (Dr. Fino's report). Hence, Dr. Caffrey's 2008 report was not admissible as a medical report because it would have exceeded the evidentiary limitations imposed by 20 C.F.R. §725.414. Instead, Dr. Caffrey's report was admitted only to the extent it constituted employer's affirmative biopsy and autopsy evidence. If a physician's biopsy or autopsy report contains conclusions that are based on materials beyond the scope of that evidence, the administrative law judge may exclude the report, redact the objectionable content, ask the physician to submit a new report, or factor in the physician's reliance upon the inadmissible evidence when deciding the weight to which his opinion is entitled. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006)(*en banc*) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007) (*en banc*) (McGranery and Hall, JJ., concurring and dissenting). In this case, the administrative law judge limited his consideration of Dr. Caffrey's 2008 report to that "portion of Dr. Caffrey's report that specifically addresse[d] the autopsy and biopsy slides." Decision and Order at 13 n.7. Contrary to employer's contention, the administrative law judge did not err in his treatment of Dr. Caffrey's 2008 opinion.

Legal Pneumoconiosis

Employer next argues that the administrative law judge committed numerous errors in finding that the medical opinion evidence established the existence of legal pneumoconiosis.[10] In this case, the administrative law judge considered the medical opinions of Drs. Baker, Forehand, Green, Dahhan, Broudy, and Fino.[11] Drs. Baker, Forehand, and Green diagnosed legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) due to both cigarette smoking and coal mine dust exposure.

[10] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

[11] The administrative law judge noted that the record also contains medical opinion evidence submitted in connection with the miner's 1997 claim. However, the administrative law judge reasonably relied upon the more recent medical opinions, which he found more accurately reflected the miner's current condition. *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Gillespie v. Badger Coal Co.*, 7 BLR 1-839 (1985); Decision and Order at 32; Director's Exhibit 1.

20 C.F.R. §718.201(a)(2); Director's Exhibits 15, 91; Claimant's Exhibit 1. Although Drs. Dahhan, Broudy, and Fino also diagnosed obstructive airways disease in the form of COPD or emphysema, they opined that it was due to cigarette smoking, and not caused, or contributed to, by the miner's coal mine dust exposure. Director's Exhibits 41; 46, 53; Employer's Exhibit 1.

The administrative law judge accorded less weight to the opinions of Drs. Dahhan, Broudy, and Fino because he found that they were based "on inadequate reasoning or reasoning contrary to the findings of the Department of Labor (DOL)." Decision and Order at 30. Conversely, the administrative law judge found that the diagnoses of legal pneumoconiosis rendered by Drs. Baker, Forehand, and Green were sufficiently reasoned and documented. *Id.* at 17-19. The administrative law judge, therefore, found that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

The Opinions of Drs. Dahhan and Broudy

Employer contends that the administrative law judge erred in his consideration of the opinions of Drs. Dahhan and Broudy. We disagree. The administrative law judge rationally found that the opinions of Drs. Dahhan and Broudy, that the miner's pulmonary impairment could not have been attributable to coal dust exposure because his coal mine employment ended in 1996, were inconsistent with the amended regulations, which recognize that pneumoconiosis may be latent and progressive, and "may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-612 (6th Cir. 2003); Decision and Order at 20-21, 23-24. The administrative law judge, therefore, permissibly accorded less weight to the opinions of Drs. Dahhan and Broudy on this basis.

The administrative law judge also found that Drs. Dahhan and Broudy improperly relied upon the absence of complicated pneumoconiosis to rule out coal dust exposure as a cause of the miner's pulmonary impairment. Decision and Order at 21, 24; Director's Exhibits 41, 56 at 7. As the administrative law judge noted, the regulations do not require a finding of complicated pneumoconiosis before a miner's disabling chronic obstructive pulmonary disease can be found to be attributable to coal dust exposure. *See* 65 Fed. Reg. 79,951 (2000) ("The statute contemplates an award of benefits based upon proof of pneumoconiosis as defined in the statute (which encompasses simple pneumoconiosis), and not just upon proof of complicated pneumoconiosis."). Consequently, the administrative law judge properly accorded less weight to the opinions of Drs. Dahhan and Broudy, that the miner's COPD was not attributable to coal dust

exposure, because the doctors' opinions were premised, in part, upon the absence of complicated pneumoconiosis.

The administrative law judge also acted within his discretion when he discounted the opinions of Drs. Dahhan and Broudy because they failed to adequately address why the miner's coal dust exposure did not contribute to his obstructive pulmonary condition. *See Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); Decision and Order at 21, 24. Because the administrative law judge has discretion as the trier-of-fact to render credibility determinations, we affirm his determination to accord less weight to the opinions of Drs. Dahhan and Broudy as to the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

Dr. Fino's Opinion

We also reject employer's contention that the administrative law judge erred in his consideration of Dr. Fino's opinion. Dr. Fino ruled out coal dust exposure as a significant factor in the miner's emphysema, based on the minimal degree of clinical pneumoconiosis that was revealed by the miner's x-rays and biopsy slides.[12] The administrative law judge permissibly accorded less weight to Dr. Fino's opinion because it is inconsistent with the DOL's recognition that coal dust can contribute significantly to a miner's obstructive lung disease independent of clinical pneumoconiosis. Decision and Order at 28, quoting 65 Fed. Reg. 79,939 (Dec. 20, 2000) (indicating that "[m]ost evidence to date indicates that exposure to coal mine dust can cause chronic airflow

[12] In assessing whether the miner's coal dust exposure contributed to his emphysema, Dr. Fino explained that:

> The amount of emphysema due to coal mine dust inhalation is directly related to the amount of pneumoconiosis that is seen clinically by biopsy and on the chest x-ray. This is well documented in an article by Dr. Leigh that I will reference later in the report. With the amount of pneumoconiosis that was described by Dr. Caffrey and the fact that [the miner] has a negative chest film, it is reasonable to assume that, based on the article by Dr. Leigh, [the miner] would have no more than 10% emphysema due to coal mine dust . . . . However, the 10% drop, in my opinion, is clinically insignificant. [The miner] would be as disabled as I find him now had he never stepped foot in the mines.

Employer's Exhibit 1.

limitation in life and emphysema at autopsy, and this may occur independently of CWP [clinical pneumoconiosis.]"); *see Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009).

The Opinions of Drs. Baker, Forehand, and Green

Employer next argues that the administrative law judge erred in finding the opinions of Drs. Baker, Forehand, and Green sufficient to establish the existence of legal pneumoconiosis. Employer essentially asks the Board to examine the credibility of the doctors' opinions, which the Board is not authorized to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). In crediting Dr. Baker's determination that the miner suffered from legal pneumoconiosis, in the form of COPD attributable to coal dust exposure, the administrative law judge noted that Dr. Baker's opinion was supported by the results of his objective testing, as well as a consideration of the miner's coal mine employment and smoking histories.[13] Decision and Order at 19. The administrative law judge similarly found that Dr. Forehand based his diagnosis of legal pneumoconiosis on the miner's objective test results, physical examination, biopsy evidence, and coal mine employment and smoking histories.[14] *Id.* at 25. The administrative law judge found that

[13] We reject employer's contention that the administrative law judge was bound by Judge Phalen's previous determination that Dr. Baker's diagnosis of legal pneumoconiosis was insufficiently reasoned and, therefore, entitled to little weight. On modification, an administrative law judge has the "authority, if not the duty, to reconsider all the evidence for any mistake of fact or change in conditions." *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-296 (6th Cir. 1994).

[14] Employer contends that Dr. Forehand did not have an accurate understanding of the duration and extent of the miner's coal dust exposure. Employer's Brief at 19-20. Employer's contention has no merit. Although employer did not contest the miner's allegation of at least twenty-nine years of coal mine employment, *see* Director's Exhibit 99, employer cites the testimony of Mr. Tim Blackburn, a vice president with Tee Engineering Company, in support of its contention that the miner spent ninety percent of his time as a surveyor in an office, doing mapping and feasibility studies. Employer's Brief at 19. Employer, however, ignores other relevant evidence, including the miner's testimony, at the hearing before Judge Phalen, that two-thirds of his time involved underground work and that, on average, he was at a mine site about thirty hours a week. Director's Exhibit 1. Judge Phalen found that a "significant portion" of the miner's work occurred at the mines, Director's Exhibit 79, while Judge Merck found that the miner worked two-thirds of his coal mine employment underground. Decision and Order at 4. Dr. Forehand relied upon a similar history, noting that twenty of the miner's twenty-nine years of coal mine employment were spent underground. Director's Exhibit 91.

Dr. Green's diagnosis of legal pneumoconiosis was based on the miner's objective test results and a consideration of the coal mine employment and smoking histories.[15] *Id.* at 29. The administrative law judge, therefore, found that the diagnoses of legal pneumoconiosis rendered by Drs. Baker, Forehand, and Green were sufficiently "reasoned and documented."[16] *Id.* at 30.

Because they are rational and supported by substantial evidence, we affirm the administrative law judge's credibility determinations. *See Rowe*, 710 at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155. We, therefore, affirm the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

[15] Employer questions the reasoning underlying Dr. Green's opinion. Employer notes that Dr. Green stated that, in assessing the relative contributions of smoking and coal dust exposure to obstructive lung disease, studies have generally shown that one year of underground mining is approximately equivalent to one pack year of smoking. Claimant's Exhibit 1. Given that Dr. Green relied on an approximate fifty year smoking history and a twenty-nine year history of coal dust exposure, employer contends that Dr. Green's suggestion that both exposures made relatively equal contributions "makes no sense." Employer's Brief at 23. Employer's contention has no merit. Given the miner's "history of heavy cigarette smoking," Dr. Green acknowledged that that it would "have contributed slightly more" to his COPD. Claimant's Exhibit 1. However, Dr. Green explained that the miner's coal dust exposure would also be a "major and clinically significant contributing factor to the COPD." *Id.*

[16] Employer argues that the administrative law judge treated the opinions of its physicians differently from Drs. Baker, Forehand, and Green. Employer's contention has no merit. The administrative law judge questioned the opinions of Drs. Dahhan, Broudy, and Fino because their reasoning was, *inter alia*, inconsistent with the findings of the Department of Labor (DOL). Decision and Order at 30. Employer does not contend, and the administrative law judge did not find, that Drs. Baker, Forehand, and Green based their opinions on assumptions that are inconsistent with the findings of the DOL.

Total Disability Due to Pneumoconiosis

In finding that the evidence established that the miner's total disability was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c),[17] the administrative law judge credited the opinions of Drs. Baker, Forehand, and Green, and discredited the opinions of Drs. Dahhan, Broudy, and Fino, for the same reasons that he set forth in his consideration of whether the medical opinion evidence supported a finding of legal pneumoconiosis. Employer raises the same challenges to the administrative law judge's disability causation finding that it raised with respect to his finding of legal pneumoconiosis. Because we have rejected those arguments, we affirm the administrative law judge's finding that the evidence established that the miner's total disability was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185-86 (6th Cir. 1997); *Adams v. Director, OWCP*, 886 F.2d 818, 825, 13 BLR 2-52, 2-63 (6th Cir. 1989).

[17] Section 718.204(c)(1) provides that:

> A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:
>
> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge