BRB No. 05-0561 BLA

FLOYD D. BROTHERSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
UNITED STATES FUEL COMPANY	)	DATE ISSUED: 03/13/2006
	)	
and	)	
	)	
PLANET INSURANCE COMPANY	)	
	)	
Employer/Carrier-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 Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Martin J. Linnet (Wilderman & Linnet, P.C.), Denver, Colorado, for claimant.

R. L. Knuth and Bruce Wycoff (Jones, Waldo, Holbrook & McDonough, P.C.), Salt Lake City, Utah, for employer/carrier.

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

McGRANERY: Administrative Appeals Judge:

Employer appeals the Decision and Order Awarding Benefits (2004-BLA-05273) of Administrative Law Judge Richard K. Malamphy 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).[1] The administrative law judge found that the parties stipulated to a coal mine employment history of at least thirty-nine and one-half years and that the record evidence supported the stipulation. The administrative law judge further found that, since this was a subsequent claim for benefits, claimant had the burden of establishing one of the elements of entitlement upon which the previous denial of benefits was predicated, *i.e.*, the existence of pneumoconiosis arising out of coal mine employment, or that claimant was totally disabled by pneumoconiosis. Considering the newly submitted evidence, the administrative law judge found that while the existence of clinical pneumoconiosis was not established by x-ray, the existence of legal pneumoconiosis was established by the newly submitted medical opinion evidence, and that claimant had therefore established a change in an applicable condition of entitlement. 20 C.F.R. §§718.201, 718.202(a)(4), 725.309(d). Turning to the merits of entitlement, the administrative law judge found, on consideration of all the evidence, that the existence of legal pneumoconiosis was established, that it arose out of coal mine employment, and that it was totally disabling. Accordingly, benefits were awarded on this subsequent claim.

On appeal, employer contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis and total disability. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs, (the Director) has not filed a brief.[2]

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[1] The instant claim is claimant's sixth. Claimant filed his first claim on March 31, 1980 which was denied by the district director on April 24, 1981 because claimant failed to establish any of the three elements of entitlement. Director's Exhibit 1. Claimant filed a second claim on July 22, 1985 which was denied, on October 4, 1985, by the district director on the same basis as the first denial. Director's Exhibit 2. On April 5, 1990 a third claim was filed which was denied by the district director on July 13, 1990 on the same basis as the first two claims, and because claimant failed to establish a material change in conditions. Director's Exhibit 3. Claimant filed a fourth claim on December 16, 1991, which was again denied by the district director on March 29, 1992 for the same reason. Director's Exhibit 4. Claimant filed a fifth claim on October 27, 1993, which was likewise denied on January 11, 1994. Director's Exhibit 5. The instant claim was filed on June 11, 2001. Director's Exhibit 6. After an initial award of benefits by the district director, a hearing was held. On March 4, 2005 Administrative Law Judge Richard K. Malamphy issued the Decision and Order awarding benefits from which employer now appeals.

[2] We affirm as unchallenged on appeal the administrative law judge's finding that the evidence did not establish the existence of pneumoconiosis at Section 718.202(a)(1)-(3) or a totally disabling respiratory impairment pursuant to Section 718.204(b)(2)(i)-(iii). 20 C.F.R. §§718.202(a)(1)-(3), 718.204(b)(2)(i)-(iii); *see Skrack v. Island Creek Coal*

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits, claimant must demonstrate by a preponderance of the evidence that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish elements of entitlement precludes an award of benefits. *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 asserts that in holding the existence of legal pneumoconiosis established, the administrative law judge erred in finding the opinion of Dr. Farney outweighed by the opinions of Drs. Monahan, Poitras, and Kanner which were not as well-reasoned. Employer asserts that the administrative law judge erred in according greater weight to the opinion of Dr. Monahan because he was claimant's treating physician without considering whether his opinion was well-reasoned and well-documented and without explaining why his opinion was entitled to greater weight, despite his lack of specialized training in pulmonary medicine. Employer further argues that the opinions of Drs. Monahan, Poitras and Kanner were not well-reasoned as they were equivocal and conclusory. Additionally, employer contends that the doctors failed to address claimant's reflux disease, a condition which could affect claimant's respiratory condition. Instead, employer contends that the administrative law judge should have credited the opinion of Dr. Farney as it was better reasoned and because Dr. Farney addressed all of the medical evidence of record, and had special expertise in pulmonary medicine.

In finding that the medical opinion evidence established the existence of legal pneumoconiosis, the administrative law judge concluded that the opinions of Drs. Monahan, Poitras, and Kanner, which found that claimant's obstructive lung disease was due, at least in part, to coal mine employment were more persuasive than Dr. Farney's opinion attributing claimant's chronic obstructive respiratory disease to gastroesophageal reflux disease. In reaching this determination, the administrative law judge found there were many physicians as far back as 1981, when claimant filed his first claim, who

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Co., 6 BLR 1-710 (1983). We further affirm the administrative law judge's finding of disability causation at Section 718.204(c) as unchallenged on appeal. 20 C.F.R. §718.204(c); *Mangus v. Director, OWCP*, 882 F.2d 1527, 13 BLR 2-9 (10th Cir. 1989); *Skrack*, 6 BLR 1-710.

attributed claimant's pulmonary changes to his coal dust exposure; the administrative law judge noted that although physicians had consistently found claimant's chest x-rays to be negative, they did find changes on claimant's pulmonary function study indicating the presence of an obstructive pulmonary defect which was probably related to coal mine dust exposure. The administrative law judge further found that it was reasonable for Drs. Monahan, Poitras and Kanner to relate claimant's chronic obstructive respiratory disease to coal dust exposure in terms of probabilities and possibilities, since claimant did not have what is commonly recognized as "medical pneumoconiosis", he was a non-smoker, and his most significant pulmonary exposure was in coal mine employment. Because the regulations provide for benefits where claimant does not have medical pneumoconiosis, but has a lung disease aggravated by coal dust exposure, the administrative law judge determined that the opinions of Drs. Monahan, Poitras and Kanner were sufficient to support a finding of legal pneumoconiosis. The administrative law judge determined that the opinion of Dr. Monahan was entitled to great weight because, as claimant's treating physician, he had treated claimant for seven years, seeing him monthly, treating him during several hospitalizations, and referring him for several pulmonary consultations.[3] The administrative law judge concluded that these factors indicate that Dr. Monahan's opinion was based on extensive, thorough examinations and treatment of claimant, and intimate knowledge of his pulmonary condition over seven years, Decision and Order at 9. The administrative law judge further found that Dr. Monahan's opinion was supported by the opinions of Drs. Poitras and Kanner and that since both Drs. Poitras and Farney were highly qualified as pulmonary specialists, their opinions were equally probative. Decision and Order at 8.

Turning to Dr. Farney's opinion, which was based on two examinations of claimant, the administrative law judge found that while Dr. Farney provided a detailed explanation for his conclusion that claimant's obstructive lung disease was due to reflux

[3] Section 718.104(d) provides, in pertinent part, that the administrative law judge must give consideration to the relationship between the miner and any treating physician whose report is admitted into the record and shall consider the following factors in weighing the opinion of the treating physician:

1) Nature of relationship.
2) Duration of relationship.
3) Frequency of treatment.
4) Extent of treatment.

The regulation also requires the administrative law judge to consider the treating physician's opinion "in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5).

disease, Dr. Farney failed to address in any detail the other possible causes of claimant's lung disease. Decision and Order at 9. Further, the administrative law judge found that while Dr. Farney stated that claimant's chronic obstructive airway disease and asthma were multifactorial, the doctor did not discuss the basis for his finding that claimant's conditions were most likely related to allergic factors and the record did not contain any evidence of allergic reactions (other than sensitivity to oat dust one time while working on a neighbor's farm). Accordingly, the administrative law judge rejected Dr. Farney's testimony that Dr. Monahan's opinion attributing claimant's lung disease to coal mine employment was unreasoned because Dr. Monahan had not considered other potential causes including reflux disease, and the administrative law judge found the opinion of Dr. Monahan, which was supported by the opinions of Drs. Poitras and Kanner, to be more persuasive. Additionally, the administrative law judge found Dr. Farney's opinion entitled to little weight because it was based on a belief that, because there was no restrictive chest disease or fibrosis, claimant did not have pneumoconiosis. The administrative law judge noted that Dr. Farney failed to consider whether claimant's obstructive airway disease, even if caused by reflux disease, could be significantly related to or substantially aggravated by claimant's coal mine employment. Decision and Order at 9.

We reject employer's initial assertion that the administrative law erred in according superior weight to the opinion of Dr. Monahan based on the treating physician rule of Section 718.104(d). The administrative law judge addressed the physician's treatment history of claimant, the frequency of that treatment, and the extent of that treatment, *i.e.*, he had treated claimant for seven years on a monthly basis and during several hospitalizations, and he had referred claimant for pulmonary consultations. Decision and Order at 7-8. Contrary to employer's assertion that the administrative law judge failed to make a proper inquiry into whether the opinion of Dr. Monahan was well-reasoned and well-documented, implicit in an administrative law judge's reliance on a particular physician's opinion is a finding that the opinion is reasoned, *see Pulliam v. Drummond Coal Co.*, 7 BLR 1-846 (1985); *see also Freeman United Coal Mining Co. v. Cooper*, 965 F.2d 443, 448, 16 BLR 2-74, 2-79 (7th Cir. 1992), and the determination of whether an opinion is reasoned is within the sound discretion of the administrative law judge, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Peskie v. United States Steel Corp.*, 8 BLR 1-126 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Moreover, we note that in making this allegation, employer fails to make any specific argument that the opinion of Dr. Monahan is not well-documented or well-reasoned. We thus reject employer's assertion that the administrative law judge erred in according superior weight to Dr. Monahan's opinion based on his treating physician status, and hold that the administrative law judge rationally accorded greater weight to the opinion pursuant to Section 718.104(d).

We further reject employer's assertions that the administrative law judge erred in according dispositive weight to the opinions of Drs. Monahan, Poitras, and Kanner and that their findings of legal pneumoconiosis were based exclusively on claimant's long history of coal dust exposure and lack of any cigarette smoking history. Decision and Order at 8. The administrative law judge found that the record demonstrates that since claimant filed his initial claim in 1981 there has been a history of physicians attributing changes in claimant's pulmonary condition to coal dust exposure. Decision and Order at 8. Moreover, contrary to employer's assertion, review of Dr. Monahan's opinion demonstrates that the physician clearly explained his conclusion that claimant suffered from chronic obstructive pulmonary disease arising from coal dust exposure. Dr. Monahan stated that claimant had commenced treatment with him seven years earlier for respiratory complaints. Claimant's Exhibit 1 at OP 0083. The doctor was aware of claimant's history of chronic obstructive pulmonary disease and multiple hospitalizations over these seven years for pneumonias and exacerbation of the chronic obstructive pulmonary disease. *Id*. Dr. Monahan explained that "over 90 percent of the time…" chronic obstructive pulmonary disease is caused by smoking, but since claimant had never smoked, smoking could not be the cause of his impairment. Claimant's Exhibit 1 at 1. Dr. Monahan also stated that Dr. Farney had believed a CT scan and an x-ray had suggested the existence of lung cancer but a bronchosotomy had ruled out lung cancer as a cause. Claimant's Exhibit 1 at OP 0084. Dr. Monahan rejected Dr. Farney's diagnosis that claimant's chronic obstructive pulmonary disease was secondary to asthma based upon the medical literature, specifically the Cecil Loeb Textbook, indicating that chronic obstructive pulmonary disease is not caused by asthma, however, it can be caused by coal dust exposure. The doctor observed that claimant's lung problem developed thirty-eight years ago, "a few years after he started working in the mines." Claimant's Exhibit 1 at 2 (OP 0083). Contrary to employer's assertion, Dr. Monahan did not ignore the condition which Dr. Farney diagnosed as gastroesophageal reflux, Dr. Monahan diagnosed the condition differently, stating:

> I do believe there is certainly a bronchospastic component to his disease, but as mentioned above, I do not feel that he has asthma which is really a chronic completely reversible disease, Mr. Botherson has x-ray findings and fixed abnormal PFT's showing that he has [no]…reversible disease.

Claimant's Exhibit 1 at 2 (OP 0084). Brief for Employer at 12.

Also, contrary to employer's assertion, Dr. Kanner acknowledged claimant's history of gastroesophageal reflux, although, like Dr. Monahan, Dr. Kanner diagnosed claimant's condition as bronchospasm. Employer's Brief at 12; Claimant's Exhibit 3 at OP 0079, OP 0076. Dr. Kanner opined that claimant "may have some bronchospasm with [his chronic respiratory disease which has resulted in an impairment]." Claimant's Exhibit 3 at OP 0076. Like Dr. Monahan, Dr. Kanner believed the bronchospasm was

not due to asthma. Dr. Kanner's opinion was based upon a complete physical examination, medical history, coal mine employment and smoking histories, x-ray, a pulmonary function study. Claimant's Exhibit 3 at OP 0076-0800. He observed that lung cancer had been ruled out as a cause. Acknowledging that "disability causation is always difficult to determine", the doctor reasoned:

> his long-term exposure to coal dust may very well have given him occupational bronchitis that has led to the subsequent respiratory problems. I have no reason to believe that he had a preexisting lung problem prior to beginning his work in the coal mines.

Claimant's Exhibit 3 at OP 0076-OP 0077.

Dr. Poitras, who examined claimant on behalf of the Department of Labor (DOL), based his opinion on a physical examination, medical, coal mine employment, and smoking histories, symptoms, x-ray, pulmonary function and blood gas studies. He diagnosed "moderate/severe obstructive lung disease with no significant improvement post bronchodilator: pulmonary function test, exam history." Director's Exhibit 12 at 4. In the box provided on the DOL form to identify the etiology of the cardiopulmonary diagnosis, the doctor stated, "miner has never smoked, etiology of lung deficit should be attributed to 39.5 years of coal dust exposure, work history entirely involved with coal mining." *Id*. Both logic and law support the doctors' consideration of claimant's non-smoking history in finding that coal dust exposure contributed to claimant's respiratory impairment. *See Big Horn Coal Co. v. Director, OWCP* [*Alley*], 897 F.2d 1052, 13 BLR 2-372 (10th Cir. 1990)(appropriate for administrative law judge to consider that claimant's smoking history was in the far distant past when determining to credit doctor who finds disability due exclusively to coal dust exposure). *See also U.S. Steel Mining Co. v. Director, OWCP*, 386 F.3d 977, 992, 23 BLR 2-213, (11th Cir. 2004)(well-reasoned medical opinions diagnosing legal pneumoconiosis took into consideration the miner's non-smoking history). The record belies employer's argument that claimant's non-smoking history propelled Drs. Monahan, Kanner and Poitras to the conclusion that claimant's chronic obstructive pulmonary disease was related to coal dust exposure. Review of their opinions reflects thoughtful consideration of all relevant information. Thus, the record provides abundant support for the administrative law judge's determination that these medical opinions established the existence of legal pneumoconiosis:

> Since the regulations provide for benefits in the case of other lung diseases aggravated by coal mine dust exposure, however, the physicians who note the most significant pulmonary exposure is the miner's coal mine dust have provided sufficient basis and sufficient discussion to conclude legal pneumoconiosis is present.

Decision and Order at 8. The United States Court of Appeals for the Tenth Circuit, within whose jurisdiction this case arises, has declared that the task of weighing conflicting medical evidence is within the sole province of the administrative law judge; neither the Board nor the court can reweigh the evidence, they may only inquire into the existence of supporting evidence. *Hansen v. Director, OWCP*, 984 F.2d 364, 368, 17 BLR 2-48, 2-54 (10th Cir. 1993). Furthermore, in crediting the three medical opinions finding claimant's coal dust exposure contributed to his obstructive respiratory impairment, the administrative law judge was on solid ground. As the United States Court of Appeals for the Seventh Circuit observed in *Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 897, 22 BLR 2-409, 2-4 (7th Cir. 2002):

> there is 'overwhelming scientific and medical evidence' supporting [the doctor's] opinion that exposure to coal dust can cause, aggravate, or contribute to obstructive lung diseases. 65 Fed.Reg. at 79,944 (citing *Freeman United Coal Mining Co. v. OWCP*, 957 F.2d 302, 303 (7th Cir. 1992); *Old Ben Coal Co. v. Prewitt*, 755 F.2d 588, 591 (7th Cir. 1985).

We also reject employer's assertion that the administrative law judge erred in failing to address the relative qualifications of the physicians since review of the administrative law judge's decision reveals that the administrative law judge found that both Drs. Farney and Kanner were highly qualified as pulmonary specialists, and thus their opinions were equally probative with regard to their qualifications. Decision and Order at 8. Our dissenting colleague points out that of the three physicians upon whom the administrative law judge relied to find legal pneumoconiosis established, only one had credentials equal to Dr. Farney's, yet our colleague overlooks the fact that employer could find no physician, with comparable or lesser credentials, who shared Dr. Farney's opinion.

Moreover, we reject employer's assertion that the opinions of Drs. Monahan, Poitras and Kanner are too conclusory and equivocal to support a finding of the existence of pneumoconiosis. The administrative law judge correctly addressed the equivocal language in the opinions, *see Justice v. Island Creek Coal Co.*, 11 BLR 1-191 (1988); *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985), and, in a permissible exercise of his discretion, found that such language did not undermine the physician's conclusions. Decision and Order at 8; *see generally Piney Mountain Coal Co. v Mays*, 176 F.3d 753, 763, 21 BLR 2-587, 2-606 (4th Cir. 1999) ("to overturn the [administrative law judge], we would have to rule as a matter of law that no 'reasonable mind' could have interpreted and credited the doctor's opinion as the [administrative law judge] did").

With regard to the opinion of Dr. Farney, we reject employer's assertions and hold that the administrative law judge reasonably accorded less weight to the physician's

opinion on the issue of the existence of pneumoconiosis pursuant to Section 718.202(a)(4). In his 2002 medical report, Dr. Farney set forth his opinion:

> Chronic obstructive airway disease secondary to asthma. The etiology of his asthma is multifactorial. It is most likely related to allergic factors but can also be associated with chronic occult gastroesophageal reflux. Note that he has had a long history of associated gastrointestinal symptoms and it is very likely that chronic aspiration has been playing a role in his pulmonary disease. Chronic reactive airways disease or asthma is not caused by exposure to coal dust. He has had sensitivity to allergens and may have triad asthma (*i.e.* nasal polyposis, asthma, and aspirin sensitivity).

Employer's Exhibit 2 at OP 0018-OP 0019.

At his deposition in 2004, Dr. Farney stated his opinion differently:

> My opinion on his medical condition is that he has a chronic obstructive airways disease which is most accurately classified as reactive airways disease, probably with multiple factors.
>
> Principally my belief is it's predominantly due to gastroesophageal reflux, occult reflux and aspiratory, possibly asthma with an allergic component.

Transcript at 58. Dr. Farney also testified that it is now understood that coal dust exposure can have a component of obstructive airways disease, "[b]ut this generally occurs in the presence of fribrosis." Transcript 62-63. He declared that he was willing to state his opinion that the miner did not suffer from medical pneumoconiosis, but he insisted upon deferring to the administrative law judge as to the determination of whether claimant suffered from legal pneumoconiosis. *See* Hearing Transcript at 62-64. In view of his insistence that he was not qualified to render an opinion on the existence of legal pneumoconiosis, his later statement that claimant suffered from no pulmonary impairment related to coal dust exposure must be viewed as ambiguous. Transcript at 81.

The administrative law judge fully explained why he found that Dr. Farney's opinion did not undermine the credibility of the opinions of Drs. Monahan, Kanner and Poitras which established the existence of legal pneumoconiosis. As the administrative law judge correctly observed, Dr. Farney expressly refused to offer an opinion on the existence of legal pneumoconiosis, Decision and Order at 9; Transcript 64. Moreover, the administrative law judge properly determined that the doctor's opinion that claimant's condition was unrelated to coal dust exposure "was based primarily on the absence of medical pneumoconiosis." Decision and Order at 9. That is a reasonable interpretation

of the doctor's testimony and entirely consistent with his refusal to offer an opinion on legal pneumoconiosis as such. Decision and Order at 9; Transcript at 62-64. The administrative law judge also criticized the doctor's opinion for failing "to consider the possibility the obstructive airway disease he agrees is present even if caused by [c]laimant's reflux disease could be significantly related to or substantially aggravated by [c]laimant's coal mine employment." Decision and Order at 9. The objection is valid. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 213, 22 BLR 2-162, 2-177 (4th Cir. 2000) (administrative law judge properly discredited Dr. Zaldivar's opinion for failing to explain why more than thirty years of coal dust exposure could not have aggravated the emphysema). Finally, the administrative law judge faulted the doctor's opinion for failing to discuss adequately the "other factors" bearing upon claimant's airways disease:

> While Dr. Farney provides a detailed description for the basis for his conclusion that the obstructive lung impairment was due to reflux disease, he did not discuss in similar detail the other factors. Dr. Farney stated the etiology of [c]laimant's chronic obstructive airway disease and asthma was multifactorial, however, he did not discuss the basis for his statement these conditions were most likely related to allergic factors. The record does not contain any other evidence of [c]laimant's allergic reactions, other than his sensitivity to oat dust one time when working on a neighbor's farm.

Decision and Order at 9. In sum, the administrative law judge identified several reasons for finding Dr. Farney's opinion less persuasive than the opinions of Drs. Monahan, Kanner and Poitras on the existence of legal pneumoconiosis. We hold that the administrative law judge has provided permissible bases for crediting the opinions of Drs. Monahan, Farney and Kanner over the contrary opinion of Dr. Farney and thus hold that the administrative law judge permissibly concluded that the weight of the evidence supports a finding of the existence of pneumoconiosis pursuant to Section 718.202(a)(4). This evidence likewise supports his determination that pneumoconiosis was "at least a contributing cause" of claimant's total disability pursuant to Section 718.204(c). *Mangus v. Director, OWCP*, 882 F.3d 1527, 1531, 13 BLR 2-9, 2-19 (10th Cir. 1989); Decision and Order at 12.

Employer next contends that the administrative law judge erred in concluding that the medical opinion evidence of record established the presence of a totally disabling respiratory impairment pursuant to Section 718.204(b). Employer asserts that only Dr. Monahan opined that claimant was totally disabled from returning to his previous employment. According to employer, the other three medical opinions cannot support a finding of total disability: Dr. Kanner diagnosed a 25-30% impairment of the whole person; Dr. Poitras merely opined that claimant suffered from a pulmonary condition

preventing a return to "heavy" work; and Dr. Farney stated that there was nothing objective to support a finding of a totally disabling respiratory impairment.

Employer strains credulity in arguing that claimant, who is "constantly on inhaled broncho-dilators and steroids" is not totally disabled. Claimant's Exhibit 1 at OP 0083-OP 0084. Nevertheless, that is employer's contention. In holding that the medical opinion evidence of record established a totally disabling respiratory impairment, the administrative law judge found that while all of the physicians agreed that claimant was disabled by his pulmonary condition, only Dr. Monahan explicitly opined that claimant was "totally disabled" by his chronic pulmonary disease. The administrative law judge found that while Dr. Kanner opined that claimant could not work because of "multiple problems" including a moderate respiratory impairment, and his age, the doctor had not specifically diagnosed a total respiratory or pulmonary disability. Nevertheless, the administrative law judge found that Dr. Kanner's opinion did not contradict but actually supported Dr. Monahan's conclusions. Decision and Order at 11. Also, the administrative law judge found that while Dr. Poitras's opinion that claimant's pulmonary disability prevented a return to any type of physical labor did not "explicitly establish total disability from [c]laimant's last work as a main control or wash box operator," it did not contradict Dr. Monahan's finding that claimant was disabled from his pulmonary condition. Decision and Order at 12. Likewise, the administrative law judge found that Dr. Farney's opinion that claimant was totally disabled from pulmonary disease, albeit due to a different etiology, was also supportive of Dr. Monahan's opinion. Decision and Order at 12.

Employer contests the administrative law judge's finding that all of the newly submitted medical reports agreed that claimant is disabled by his pulmonary condition. Decision and Order at 11. In support of its argument, employer does not cite Dr. Farney's medical report of November 25, 2002, but his deposition testimony on June 30, 2004. The doctor testified that claimant had a mild to moderate airflow obstruction and that "there's nothing about the numbers that would preclude" claimant from doing his work at the tipple. Hearing Transcript at 81-83. Dr. Farney did not specify which "numbers" he relied upon to reach such a conclusion, as the pulmonary function study the physician later referred to in his testimony demonstrated a moderate to severe impairment, Hearing Transcript at 88. The physician also failed to explain why he contradicted the opinion on total disability contained in his medical report nineteen months earlier, in which he had opined that claimant was "completely disabled from any type of work secondary to his pulmonary disease." Employer's Exhibit 2 at 4. The record does not reflect the doctor had considered any new evidence in the meantime. Hence, review of Dr. Farney's medical report reveals that the administrative law judge was correct in stating that "Dr. Farney concluded [c]laimant is totally disabled from work due to his pulmonary disease." Decision and Order at 12. Given the unexplained contradiction of his medical report, Dr. Farney's deposition testimony could not

reasonably be deemed substantial evidence undermining the credibility of medical reports which support a finding of total respiratory disability, including his own.

Employer also argues that the opinions of Drs. Kanner and Poitras cannot be construed to support a finding of total disability. The administrative law judge found that the opinions of Drs. Kanner and Poitras supported a finding of total disability when he considered them in light of claimant's description of his usual coal mine employment as a main control or wash box operator. Although claimant testified that the job entailed mostly sitting, he stated that he had to climb to the top of the tipple which is "a couple of stories high." Hearing Transcript at 42; Decision and Order at 12. The administrative law judge reasonably concluded that Dr. Poitras's finding of a "moderate/severe" respiratory obstruction and Dr. Kanner's finding of a 25% to 30% impairment of the whole man due to a moderate obstruction, was each sufficient to preclude claimant's undertaking the "required climbing several flights of stairs to get to the control location." Decision and Order at 12. This was rational. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, *aff'd on recon.*, 9 BLR 1-104 (1986). The record belies the assertion of our dissenting colleague that the administrative law judge's finding of total disability was conclusory, and that he failed to make a specific finding regarding the exertional requirements of claimant's usual coal mine employment. The administrative law judge expressly stated that claimant's work required him to climb several flights of stairs and that the respiratory obstruction which the doctors diagnosed would preclude performance of that work. Further, contrary to employer's assertion, the administrative law judge did not accord greater weight to Dr. Monahan's opinion of total disability based on the physician's status as treating physician. Rather, review of the administrative law judge's Decision and Order reveals that the administrative law judge considered the medical opinion evidence in toto and held that Dr. Monahan's specific opinion of total disability, as supported by the opinions of Dr. Kanner and Poitras, was sufficient to carry claimant's burden at Section 718.204(b)(2)(iv). *See Hansen*, 984, F.2d at 270, 17 BLR at 2-59. Accordingly, we affirm the administrative law judge's finding that total disability was demonstrated at Section 718.204(b)(2)(iv) and, based on the finding of the administrative law judge, that the medical opinion evidence was the most reliable evidence in the instant case, Decision and Order at 12, we affirm the determination that claimant established a totally disabling respiratory impairment pursuant to Section 718.204(b)(2). *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Hansen*, 984 F.2d 364, 17 BLR 2-48.

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, dissenting:

I respectfully disagree with my colleagues. I would vacate the administrative law judge's award of benefits. I agree with employer's assertion that the administrative law judge erred in his application of the treating physician rule at 20 C.F.R. §718.104(d) to Dr. Monahan's opinion. Specifically, while the administrative law judge properly addressed the factors found at Section 718.104(d); his conclusion that "Dr. Monahan's opinion is based on extensive and thorough examinations," Decision and Order at 8, does not constitute the required inquiry into whether the opinion is well-reasoned and well-documented, nor does the administrative law judge explain how Dr. Monahan, as claimant's treating physician, had superior understanding of claimant's condition. 20 C.F.R. §718.104(d); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003).

Moreover, I would vacate the administrative law judge's conclusion that the opinions of Drs. Monahan. Poitras and Kanner support a finding of legal pneumoconiosis pursuant to Section 718.202(a)(4) because the physicians' conclusions were based on claimant's lengthy coal mine employment history and the absence of any cigarette smoking history. Decision and Order at 8. These factors alone are insufficient to provide the bases for a well-reasoned opinion. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Underwood v. Elkray Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997) (There are several factors that an administrative law judge must consider in determining the weight to accord a particular medical expert's opinion, and the detail of the analysis in the opinion is just one of them.); *see also Risher v. Director, OWCP*, 940 F.2d 327, 331, 15 BLR 2-186, 2-191 (8th Cir. 1991) (administrative law

judge may disregard medical opinion that does not adequately explain basis for its conclusion).

Further, while I agree with the majority that the administrative law judge did address the relative qualifications of Drs. Farney and Kanner, the administrative law judge erred in not addressing Dr. Farney's qualifications as a board-certified pulmonologist, Employer's Exhibit 2, relative to those of Drs. Monahan and Poitras whom the record indicates do not possess the same credentials. Decision and Order at 8. Likewise, I believe that the administrative law judge did not fully consider the extent of claimant's reflux condition and whether such a condition would play a role in claimant's breathing difficulties. Thus, I would vacate the administrative law judge's finding that the medical opinion evidence establishes the existence of legal pneumoconiosis, and would remand the case for further consideration of the relevant opinions.

In addition, I would vacate the administrative law judge's finding that claimant established the existence of a totally disabling respiratory impairment pursuant to Section 718.204(b)(2)(iv). Specifically, the administrative law judge has again accorded greater weight to the opinion of Dr. Monahan without making a specific inquiry into whether the opinion was well-reasoned and well-documented. Moreover, the administrative law judge failed to specify why Dr. Monahan's treating physician status afforded the physician a superior understanding of claimant's pulmonary condition and the extent of his disability. Moreover, as my colleagues note, neither Dr. Poitras nor Dr. Kanner specifically opined that claimant was totally disabled and while the administrative law judge found the opinions supportive of such a finding, the administrative law judge's finding was conclusory and he failed to make a specific determination regarding the exertional requirements of claimant's usual coal mine employment. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, *aff'd on recon.*, 9 BLR 1-104 (1986).

Accordingly, I would vacate the administrative law judge's finding that the medical opinion evidence establishes a totally disabling respiratory impairment, and hold that the administrative law judge must again weigh the relevant evidence, if reached, on remand. The administrative law judge must sufficiently discuss the evidence and his reasons for crediting an opinion or discrediting it pursuant to the requirements of the Administrative Procedure Act (the APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), which requires that every adjudicatory decision be accompanied by a statement of findings of fact and conclusions of law and the basis therefor on all material issues of fact, law or discretion presented in the record. To the extent that the administrative law judge's findings at Section 718.203(b) and Section 718.204(c) were based on flawed findings of the

existence of legal pneumoconiosis and the existence of totally disabling respiratory impairment as demonstrated by the medical opinion evidence, I would vacate these determinations as well and instruct the administrative law judge to again consider these elements on remand.

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ROY P. SMITH
Administrative Appeals Judge