BRB No. 06-0374 BLA

SYLVIA L. BARTON (Widow of LENDON L. BARTON)	)	
Claimant-Respondent	)	
v.	)	
D & L COAL COMPANY	)	DATE ISSUED: 03/15/2007
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order-Awarding Benefits In The Living Miner's Claim and Denying Benefits In the Survivor's Claim of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

H. Ashby Dickerson (Penn Stuart & Eskridge), Abingdon, Virginia, for employer.

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

McGRANERY, Administrative Appeals Judge:

Employer appeals the award of benefits in the Decision and Order-Awarding Benefits In The Living Miner's Claim and Denying Benefits In The Survivor's Claim (04-BLA-0067 and 04-BLA-5598) of Administrative Law Judge Daniel F. Solomon on a miner's and a survivor's 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]

[1] The miner filed a claim for benefits on April 4, 2000, which was denied by the district director on March 19, 2001, due to the miner's failure to establish the existence of pneumoconiosis or total disability due to pneumoconiosis. Director's Exhibits 1, 35. The miner requested a formal hearing, but died on August 2, 2001 before the hearing could be held. Director's Exhibits 22, 47. The miner's claim was remanded to the district director

Based on the date of filing, the administrative law judge adjudicated the claims pursuant to 20 C.F.R. Part 718, noting the parties' stipulation that the miner established eleven years of coal mine employment. Hearing Transcript at 8. Regarding the miner's claim, the administrative law judge found that because the existence of pneumoconiosis and total disability due to pneumoconiosis were established, elements previously adjudicated against claimant, claimant had established a mistake in a determination of fact and a basis for modifying the prior denial of the miner's claim. 20 C.F.R. §725.310 (2000).[2] As all elements of entitlement had been established, the administrative law judge awarded benefits on the miner's claim as of April 1, 2000, to commence as of the first day of the month in which the miner had filed his claim. Regarding the survivor's claim, the administrative law judge found that the miner's widow (claimant) failed to establish that the miner died due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and, accordingly, denied benefits on the survivor's claim. Claimant has not appealed that decision.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established total disability due to pneumoconiosis (disability causation) in the miner's claim, and also erred in awarding benefits on the miner's claim from April 1, 2000, the first day of the month in which the miner filed his claim. Claimant and the Director, Office of Workers' Compensation Programs (the Director), are not participating in the appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and

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to allow for the filing of a survivor's claim, and the naming of a representative to pursue the miner's claim. Director's Exhibit 45. On March 11, 2002, the miner's widow (claimant), requested modification of the denied miner's claim, and, on March 12, 2003, filed a claim for survivor's benefits. Both claims were denied by the district director on October 10, 2003, as claimant had failed to establish the existence of pneumoconiosis and disability causation in the miner's claim, and failed to establish that the miner died due to pneumoconiosis in the survivor's claim. Director's Exhibits 23, 58. Claimant, thereafter, requested a formal hearing. Director's Exhibit 61.

[2] The administrative law judge found that the existence of pneumoconiosis was established based on the autopsy report which showed simple coal worker's pneumoconiosis and the opinions of reviewing physicians developed subsequent to the miner's death. Decision and Order at 11; 20 C.F.R. §718.202(a)(2), (a)(4). The administrative law judge found that the x-ray taken during the miner's life did not establish the existence of pneumoconiosis. Decision and Order at 11; 20 C.F.R. §718.202(a)(1).

may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer contends that the administrative law judge erred in finding disability causation established because, even if the existence of pneumoconiosis were established prior to the miner's death, the great weight of the medical evidence established that the miner's totally disabling respiratory impairment was due to his substantial smoking history, not to his coal dust exposure. Employer first asserts that the administrative law judge erred in crediting the opinion of Dr. Sutherland because Dr. Sutherland's office treatment notes, from May 23, 1991 until June 12, 2001, attribute the miner's symptoms to bronchitis and emphysema, not pneumoconiosis, and do not indicate that the miner's bronchitis and emphysema are related to coal dust exposure. Employer also asserts that Dr. Sutherland's March 19, 2001 letter, in which he attributes the miner's respiratory problems to coal dust exposure, provides little documentation for his conclusion and that the doctor's failure to attribute the miner's respiratory problems to coal dust exposure in office treatment notes dated between 1991 to 2001, undermines the credibility of the 2001 letter. Employer also asserts that Dr. Sutherland's failure to discuss the significance of the miner's substantial smoking history or even mention it in his treatment notes further undermines his opinion and his reference to Dr. Rasmussen's evaluation of the miner is not sufficient to lend credence to Dr. Sutherland's opinion as Dr. Rasmussen is not Board-certified in pulmonary medicine. Similarly, employer argues that the administrative law judge erred in relying on Dr. Sutherland's findings of rhonchi, wheezing, cough, clubbing of the fingers, and the miner's use of bronchodilators without explaining how such findings establish the existence of pneumoconiosis. Employer considers the administrative law judge's reliance on Dr. Sutherland's opinion is unwarranted despite his status as the treating physician because Dr. Sutherland is only a family practitioner, not a pulmonary specialist, and employer believes his opinion was neither well-documented nor well-reasoned, citing Section 718.104(d)(5).

In considering the opinion of Dr. Sutherland, the administrative law judge found that, in his March 19, 2001 letter, Dr. Sutherland indicated that the miner had pneumoconiosis, with severe irreversible obstructive and restrictive lung disease, and that it was clear that the doctor considered that pneumoconiosis contributed to the miner's lung disease. The administrative law judge further found that the 2001 letter contained specific findings concerning Dr. Sutherland's examination of the miner, *i.e.*, physical findings and medications the miner was taking for his respiratory problems. Additionally, the administrative law judge noted that Dr. Sutherland referred to a report and evaluation from Dr. Rasmussen, who also found the miner totally disabled due to pneumoconiosis. The administrative law judge determined that records from Dr. Sutherland, the miner's treating physician, documented the miner's ongoing visits and treatments over ten years for breathing problems, with at least five visits occurring within the last year. Further, the administrative law judge noted that while Dr. Sutherland did

not mention the miner's history of cigarette smoking, the record showed that the miner quit smoking in 1983, approximately eight years before Dr. Sutherland started treating him. Thus, considering that Dr. Sutherland had been the miner's treating physician for over ten years and had treated the miner for breathing problems, that Dr. Sutherland's report was well-documented and reasoned, and that it was buttressed by Dr. Rasmussen's opinion, the administrative law judge accorded it great weight.

Contrary to employer's argument, the administrative law judge permissibly found that Dr. Sutherland's opinion, as stated in his March 19, 2001 letter, was well-documented and reasoned as it was within the administrative law judge's discretion to consider the report as a whole. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212, 22 BLR 2-162, 2-176 (4th Cir. 2000)(Fourth Circuit held that administrative law judge properly credited doctor's opinion that miner's disease was partially caused by coal dust exposure even though the opinion provided no explanation for the conclusion because the totality of the report indicated it was a reasoned medical opinion: the diagnosis was based on the miner's history of coal dust exposure and cigarette smoke, a medical history, physical examination and results of a pulmonary function test);[3] *Piney Mountain Coal Co. v. Mays*, 176 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); in *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996). Further, contrary to employer's argument, the letter was buttressed by the doctor's treatment notes. Both in his 2001 letter and in treatment notes, Dr. Sutherland recorded the miner's ongoing problems with rhonchi, wheezing, cough, clubbing of the fingers and need for bronchodilators. While Dr. Sutherland did not explicitly attribute the miner's bronchitis and emphysema to coal mine employment, the doctor did, in one treatment note, list "emphysema/pneumoconiosis." Director's Exhibit 21 at 2. Moreover, the administrative law judge did not err in finding that the opinion of Dr. Sutherland was buttressed by the fact that Dr. Sutherland was aware of Dr. Rasmussen's report, finding the miner totally disabled due to pneumoconiosis. Nor, contrary to employer's contention, did the administrative law judge err in crediting Dr. Sutherland's opinion because the doctor did not discuss the miner's smoking history, since the administrative law judge noted this omission and considered it understandable in light of claimant's eight-year history as a non-smoker before beginning treatment with Dr. Sutherland. The administrative law judge permissibly determined that this omission did not affect the credibility of Dr. Sutherland's opinion that claimant suffered from pneumoconiosis with severe obstructive

[3] The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has repeatedly applied this rationale to uphold an administrative law judge's weighing of medical opinion evidence. Those decision's however, have not warranted publication.

and restrictive lung disease. *See Mays*, 176 F.3d 753, 21 BLR 2-587; *Hicks*, 138 F.3d 524, 21 BLR 2-323; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

The administrative law judge also did not err by according greater weight to Dr. Sutherland's opinion based on the doctor's status as the miner's treating physician, even though Dr. Sutherland was not a pulmonologist, as the administrative law judge adequately considered the factors specified in 20 C.F.R. §718.104(d), and permissibly found that this doctor's ten year period of treating the miner for breathing difficulties, as well as non-respiratory conditions, and his reasoned and documented report, merited determinative weight. Decision and Order at 13-16; Director's Exhibits 50, 55, 56; 20 C.F.R §718.104(d)(1)-(5); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).

Employer also contends that the administrative law judge erred in crediting the opinion of Dr. Rasmussen because it lacked sufficient reasoning connecting its documentation with its final conclusion. Employer concedes that Dr. Rasmussen performed a thorough pulmonary examination which included an x-ray, pulmonary function study, and blood gas study, but contends that the doctor failed to discuss his findings in terms of his conclusion. Employer also contends that Dr. Rasmussen failed to distinguish between a respiratory impairment caused by cigarette smoking and that caused by coal mine dust exposure, other than to state that the two known risk factors for the cause of the miner's respiratory impairment were smoking and coal mine employment and that, since the miner has a significant history of coal mine dust exposure and x-ray changes consistent with pneumoconiosis, it was reasonable to conclude claimant had pneumoconiosis due to coal mine employment. Director's Exhibits 55, 56.

In crediting the opinion of Dr. Rasmussen, the administrative law judge found that Dr. Rasmussen performed a thorough pulmonary examination of the miner, which included an x-ray, pulmonary function study, and blood gas study, and that the results of these tests and findings on physical examination supported the doctor's conclusions. The administrative law judge further credited Dr. Rasmussen's opinion that coal dust exposure "had to be considered a major contributing factor to the [m]iner's lung disease[,]" because coal mine employment and smoking were the two major risk factors for the miner's disabling lung disease, and the law does not require that pneumoconiosis be the sole or most important cause of disability. Decision and Order at 15.

We reject employer's argument that the administrative law judge erred by crediting the disability causation opinion of Dr. Rasmussen. It was within the administrative law judge's discretion to find this opinion adequately reasoned since the

physician relied on his examination of the miner, the miner's work history, the miner's smoking history, symptoms, objective tests, and x-ray readings. *See Compton*, 211 F.3d at 211, 22 BLR at 2-176. As discussed *supra*, the Fourth Circuit has held that an administrative law judge may conclude from consideration of the totality of a doctor's report that it is a reasoned medical opinion. *Id*. 211 F.3d at 212, 22 BLR at 2-176. The *Compton* court cited with approval *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893-94, 13 BLR 2-348, 2-355 (7th Cir. 1990) in which the Seventh Circuit upheld a similar medical opinion. *Id*. The detail of a physician's analysis is just one of several factors an administrative law judge must consider when determining the weight to accord a physician's opinion. *Id*. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951 (4th Cir. 1997)(listing the relevant factors). Furthermore, contrary to employer's argument, the doctor was not required to differentiate between disability caused by smoking and that caused by coal dust exposure, *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483, 22 BLR 2-266, 2-281 (7th Cir. 2001). The doctor's unequivocal opinion that coal dust exposure contributed to the miner's respiratory impairment constitutes substantial evidence. *See Cornett v. Benham Coal Co., Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000). Accordingly, the administrative law judge properly credited Dr. Rasmussen's opinion on the existence of legal pneumoconiosis. *Compton*, 211 F.3d at 212, 22 BLR at 2-176; *Summers*, 272 F.3d at 483, 22 BLR at 2-281; *Cornett*, 227 F.3d at 576, 22 BLR at 2-121.

Employer also argues that the administrative law judge erred in discounting the opinion of Dr. Forehand, who initially diagnosed the existence of a totally disabling respiratory impairment due to smoking and coal dust exposure but, after reviewing additional negative x-ray interpretations, changed his diagnosis and opined that the miner did not have pneumoconiosis and that his total respiratory disability was due solely to smoking. Director's Exhibits 12, 13, 34, 55. Employer contends that the administrative law judge erred in rejecting this opinion due to Dr. Forehand's retraction of his initial diagnosis of pneumoconiosis since the administrative law judge, himself, found that the x-ray readings failed to establish the existence of pneumoconiosis (the administrative law judge found the existence of pneumoconiosis to be established instead by autopsy evidence), the administrative law judge should not have rejected Dr. Forehand's opinion on this basis. Further, employer contends that the doctor's reliance on negative x-rays was irrelevant to the doctor's opinion that the miner's bronchitis was due to smoking. Thus, employer asserts that the administrative law judge erred in discounting Dr. Forehand's opinion.

In considering the opinion of Dr. Forehand, the administrative law judge discounted it because the doctor put too much emphasis on the miner's negative x-ray readings and the doctor's change in opinion was based on the erroneous assumption that the evidence did not support the presence of pneumoconiosis. The administrative law judge properly accorded little weight to Dr. Forehand's opinion because Dr. Forehand

erroneously believed that the miner did not have pneumoconiosis. The administrative law judge properly found that this erroneous assumption undermined the credibility of Dr. Forehand's causation opinion. Decision and Order at 15-16; Director's Exhibits 12, 13, 34, 55; *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Compton*, 211 F.3d 203, 22 BLR 2-162; *Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Gross*, 23 BLR 1-8; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1985); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). Accordingly, we affirm the administrative law judge's discounting of Dr. Forehand's opinion.

Similarly, employer contends that the administrative law judge erred in discounting Dr. Fino's opinion simply because Dr. Fino, a Board-certified pulmonologist, found that the evidence failed to support a finding of pneumoconiosis. Contrary to employer's argument, the administrative law judge did not err by according little weight to the opinion of Dr. Fino, because he, like Dr. Forehand, did not diagnose the existence of pneumoconiosis. Director's Exhibits 1, 13, 40; *Scott*, 289 F.3d 263, 22 BLR 2-372; *Compton*, 211 F.3d 203, 22 BLR 2-162; *Toler*, 43 F.3d 109, 19 BLR 2-70; *Gross*, 23 BLR 1-8, *Trujillo*, 8 BLR 1-472.

Employer additionally argues that the administrative law judge erred in discounting the opinions of Drs. Caffrey and Naeye, pathologists, because they found that the "amount of pneumoconiosis" the miner had was "too mild to have caused disability." Decision and Order at 16. In considering the opinions of Drs. Caffrey and Naeye, the administrative law judge discounted them because they found that the miner's pneumoconiosis was too mild to have caused a disability while the miner was alive. *Id*. The administrative law judge gave little weight to these doctors' opinions on the issue of causation, despite the fact that they were Board-certified pathologists, because he found them outweighed by the more credible opinions of Dr. Sutherland, the miner's treating physician, and Dr. Rasmussen, and because the record showed that the miner did have a loss in lung function. Decision and Order at 15-16; Director's Exhibits 1-3, 50-52, 55, 56.

The administrative law judge provided an invalid reason for discounting these opinions because the reports did not deny that the miner had a respiratory impairment; rather, they stated only that the contribution made by coal dust exposure was minimal. On remand, the administrative law judge must state clearly whether he finds either clinical or legal pneumoconiosis or both established so that he can properly analyze the opinions on causation. Although the Fourth Circuit stated in *Compton*, that a finding of pneumoconiosis should be made after weighing together all of the evidence at Section 718.202(a), the court also held that the administrative law judge had erred in crediting a medical opinion on causation (the opinion of Dr. Gaziano) which was based on a finding of clinical pneumoconiosis and the administrative law judge had found the weight of the evidence negative for clinical pneumoconiosis. *Compton*, 211 F.3d at 211-212, 22 BLR

at 2-175; *see Scott*, 289 F.3d 263, 22 BLR 2-372; *Toler*, 43 F.3d 109, 19 BLR 2-70. In *Consolidation Coal Co. v. Held*, 314 F.3d 184, 187 n.2, 22 BLR 2-564, 2-571 n.2 (4th Cir. 2002), the Fourth Circuit observed that employer's expert had failed to make the critical distinction between clinical and legal pneumoconiosis, and the court declared that it was imperative for the administrative law judge to make this distinction and bear it in mind. Accordingly, we must vacate the administrative law judge's finding regarding the opinions of Drs. Caffrey and Naeye and remand the case for consideration of those opinions. On remand, the administrative law judge must reconsider all the medical opinions together to determine whether disability causation was established and, consequently, whether a mistake in a determination of fact was made and, therefore, whether a basis for modifying the prior denial of the miner's claim has been made at Section 725.310 (2000). *See Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).[4] The award of benefits in the miner's claim is, accordingly, vacated and the case is remanded for reconsideration of disability causation. *See* 20 C.F.R. §718.204(c); *see also Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

Employer also contends that the administrative law judge erred in finding the onset date of entitlement in the miner's claim to be April 1, 2000, the first day of the month in which the miner filed his claim for benefits. Employer contends that the administrative law judge erred in finding the onset date of benefits to be prior to August 1, 2001, the first day of the month in which the autopsy evidence established the existence of pneumoconiosis.[5] Employer contends that because the existence of pneumoconiosis was based on autopsy evidence alone, the administrative law judge, himself, conceded that "it [was] difficult to know the exact date when total disability due to pneumoconiosis began." Employer's Brief at 10; Decision and Order at 16. Thus, while employer concedes that the autopsy establishes that the miner had pneumoconiosis at the time of his death on August 22, 2001, it contends that there is no evidence indicating that the miner developed pneumoconiosis prior to that date. Further, given that the autopsy evidence showed that the pneumoconiosis diagnosed was extremely mild, employer contends that claimant has failed to establish the existence of pneumoconiosis prior to the miner's death. Alternatively, employer contends that, even if the onset date is determined to be before August 1, 2001, it cannot be before February 1, 2001, the month that Dr. Rasmussen found the miner to be totally disabled due to pneumoconiosis. Employer contends that the onset date cannot be June 15, 2000, the date of the first qualifying pulmonary function and blood gas testing and Dr. Forehand's examination of

[4] Employer does not challenge the administrative law judge's finding of pneumoconiosis based on autopsy evidence.

[5] An autopsy, showing the existence of pneumoconiosis, was performed on August 22, 2001, the day the miner died.

the miner, because Dr. Forehand found claimant to be impaired as a result of bronchitis due to smoking, not coal workers' pneumoconiosis.

The administrative law judge found that claimant was entitled to modification of the denial of the miner's claim because newly submitted evidence established the existence of pneumoconiosis arising out of coal mine employment and that claimant was totally disabled due to pneumoconiosis. The administrative law judge found, therefore, that a mistake in a determination of fact had been made and that entitlement was established on the miner's claim. In finding claimant entitled to benefits as of April 1, 2000, the first day of the month in which the miner filed his claim, the administrative law judge relied on the following: that the August 22, 2001 autopsy established the miner had pneumoconiosis; that Dr. Sutherland had noted increasing shortness of breath in the miner since 1992; that the miner had qualifying pulmonary function and blood gas tests dating back to June 2000; and that a mistake in a determination of fact had been made denying the miner's claim.

Once entitlement to benefits has been demonstrated, the date for commencement of those benefits is determined by the month in which claimant became totally disabled due to pneumoconiosis. 20 C.F.R. 725.503; *see Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(*en banc*); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). Unlike a finding of a change in condition, which entitles claimant to benefits only from the date of the change, the correction of a mistake in fact entitles claimant to benefits from the date that the miner became totally disabled due to pneumoconiosis. *See Eifler v. Peabody Coal Co.*, 926 F.2d 663, 15 BLR 2-1 (7th Cir. 1991). If the date of onset of total disability due to pneumoconiosis is not ascertainable from all the relevant evidence of record, benefits will commence with the month during which the claim was filed, unless credible evidence establishes that the miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990).

The administrative law judge properly determined that the date of the miner's autopsy report and Dr. Rasmussen's qualifying objective test results did not establish the date that the miner became totally disabled due to pneumoconiosis, as they merely showed that the miner became totally disabled due to pneumoconiosis at some earlier date. Decision and Order at 16-17; Director's Exhibits 10, 14, 50, 55; 20 C.F.R. §725.503; *Krecota*, 868 F.2d 600, 12 BLR 2-178; *Green*, 790 F.2d 1118, 9 BLR 2-32; *Ives v. Jeddo Highland Coal Co.*, 9 BLR 1-167 (1986); *Merashoff v. Consolidation Coal Co.*, 8 BLR 1-105 (1985). Moreover, the administrative law judge did not err by noting that the miner's first qualifying objective test results were performed on June 15, 2000, regardless of Dr. Forehand's finding that the miner's total disability was not due to

pneumoconiosis, since the administrative law judge permissibly rejected Dr. Forehand's causation opinion because Dr. Forehand did not find the existence of pneumoconiosis. Decision and Order at 15-17; Director's Exhibits 10, 13, 14, 34; *Williams v. Director, OWCP*, 13 BLR 1-28 (1989). Since the administrative law judge has considered the record evidence and rationally found that the exact date the miner became totally disabled due to pneumoconiosis could not be established, the administrative law judge properly awarded benefits as of the month the miner filed his claim for benefits. *Green*, 790 F.2d 1118, 9 BLR 2-32; *Dempsey*, 23 BLR 1-47; *Edmiston*, 14 BLR 1-65; *Lykins*, 12 BLR 1-181.

Accordingly, the administrative law judge's award of benefits in the Decision and Order-Awarding Benefits In The Living Miner's Claim And Denying Benefits In The Survivor's Claim is affirmed in part, vacated in part, and the case is remanded for further proceedings consistent with this opinion. If on remand, the administrative law judge finds that the evidence establishes disability causation, the administrative law judge's determination that claimant is entitled to benefits on the miner's claim as of April 1, 2000, 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

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I agree with my colleagues that the administrative law judge's award of benefits must be vacated and that the case be remanded because the administrative law judge provided an invalid reason for discounting the opinions of Drs. Caffrey and Naeye, *i.e.*, they opined that the miner's pneumoconiosis was too mild to have caused disability when the miner's total respiratory disability had been established. Review of the doctors' opinions, however, shows that they did not deny that the miner had a respiratory

impairment, but stated only that the contribution made by coal dust exposure was minimal, and offered alternative explanations for the cause of the miner's breathing impairment. The administrative law judge erred, however, in not considering this when rejecting their opinions. *See* 20 C.F.R. §718.204(c); *see also Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). On remand, therefore, the administrative law judge must consider the opinions of Drs. Caffrey and Naeye in their totality. Unlike my colleagues, however, I would also vacate the administrative law judge's finding affirming the administrative law judge's consideration of the opinion of Dr. Sutherland as to the etiology of claimant's pneumoconiosis.

Employer argues that the administrative law judge did not properly weigh the medical opinion of Dr. Sutherland, on the issue of the etiology of the miner's pneumoconiosis, because the administrative law judge gave great weight to Dr. Sutherland's opinion even though he failed to consider the miner's smoking history. Employer is correct inasmuch as the administrative law judge noted that the miner had been a non-smoker for eight years before he saw Dr. Sutherland, but the administrative law judge did not consider whether the physician's failure to discuss the miner's 27 year smoking history affected his credibility. Whether Dr. Sutherland failed to consider the miner's substantial smoking history is relevant to assessing the credibility of the doctor's opinion (including its reasoning and documentation) and is a factor the administrative law judge must consider in weighing the evidence. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951 (4th Cir. 1997)("In weighing opinions, the [administrative law judge] is called upon to consider their quality," taking into account, among other things, "the opinions' reasoning" and "detail of analysis."); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11(1988); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983).

Accordingly, I would vacate the administrative law judge's award of benefits and remand the case for the administrative law judge to reconsider the medical opinion evidence on the issue of disability causation, taking into account his findings as to the miner's pneumoconiosis and his weighing of the evidence relevant to the existence of pneumoconiosis. Because I would remand the case to the administrative law judge to reconsider whether disability causation is established, I would not address the administrative law judge's onset date finding, at this time, as the administrative law judge's reconsideration of the evidence on disability causation necessarily affects that finding.

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JUDITH S. BOGGS
Administrative Appeals Judge