BRB No. 09-0479 BLA

HUBERT HELTON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HARRY H. PHILPOT TRUCKING, INCORPORATED	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	DATE ISSUED: 03/24/2010
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order-Award of Benefits in Initial Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Hubert Helton, St. Charles, Virginia, *pro se*.

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

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

PER CURIAM:

Employer appeals the Decision and Order-Award of Benefits in Initial Claim (07-BLA-5732) of Administrative Law Judge Larry S. Merck 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 credited claimant with fifteen years of coal mine employment[2] based on the parties' stipulation. Decision and Order at 10. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence established the existence of clinical and legal pneumoconiosis[3] arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b). The administrative law judge further found that the evidence established that claimant is totally disabled and that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §§718.204(b)(2)(i), (iv), 718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence established the existence of clinical and legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(1), (4). Employer further argues that the administrative law judge erred in his analysis of the medical opinion evidence when he found that claimant is totally disabled, and that his total disability is due to pneumoconiosis, pursuant to 20 C.F.R. §§718.204(b)(2)(iv), 718.204(c). Claimant generally contends that he is entitled to benefits. The Director, Office of Workers'

[1] Claimant filed his claim for benefits on November 21, 2003. Director's Exhibit 2. The district director issued a proposed decision and order awarding benefits on November 8, 2004. Director's Exhibit 36. Employer requested a formal hearing and the case was referred to the Office of the Administrative Law Judges on February 18, 2005. Director's Exhibits 37, 48.

[2] The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibits 3, 11. 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, 1-202 (1989) (*en banc*).

[3] Clinical pneumoconiosis is defined as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). 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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

Compensation Programs, has indicated that he will not file a substantive response in this appeal.[4]

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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is 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 any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Employer asserts that in evaluating the evidence pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge erred in mechanically relying on the most recent x-ray interpretations, and the numerical superiority of the x-ray interpretations. Employer's Brief 10, 11. Employer's assertion lacks merit.

In finding that the x-ray evidence established the existence of pneumoconiosis, the administrative law judge considered twelve readings of five x-rays. The administrative law judge noted that Dr. Miller, a B reader and Board-certified radiologist, read the July 18, 2003 x-ray as positive for pneumoconiosis, while Dr. Kendall, a B reader and Board-certified radiologist, read the same x-ray as negative for pneumoconiosis. Director's Exhibits 35, 51 at 410. The administrative law judge permissibly found the readings of this x-ray to be in equipoise. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 272-76, 18 BLR 2A-1, 2A-6-9 (1994); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004); Decision and Order at 15. The administrative law judge noted that Dr. Baker, a B reader, and Dr. Alexander, a B reader and Board-certified

[4] As employer does not challenge the administrative law judge's finding that the pulmonary function studies of record are sufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(i), we affirm the administrative law judge's finding. *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711-12 (1983).

radiologist, read the February 9, 2004 x-ray[5] as positive for pneumoconiosis, while Dr. Halbert, a B reader and Board-certified radiologist, read the same x-ray as negative for pneumoconiosis. Director's Exhibits 16, 511 at 55, 189. The administrative law judge acted within his discretion in according more weight to the readings of Drs. Alexander and Halbert than to that of Dr. Baker, based on their superior radiological qualifications. *See Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; Decision and Order at 16. Thus, the administrative law judge permissibly concluded that the x-ray readings of the February 9, 2004 x-ray are in equipoise. *See Ondecko*, 512 U.S. at 272-76, 18 BLR at 2A-6-9; *Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; *White*, 23 BLR at 1-4-5; Decision and Order at 16. Dr. Alexander also read the March 8, 2004 x-ray as positive for pneumoconiosis, while Dr. Kendall, a B reader and Board-certified radiologist, read the same x-ray as negative for pneumoconiosis. Director's Exhibits 35, 51 at 413. Again, the administrative law judge permissibly found evidence regarding this x-ray to be in equipoise. *See Ondecko*, 512 U.S. at 272-76, 18 BLR at 2A-6-9; *Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; *White*, 23 BLR at 1-4-5; Decision and Order at 16. Dr. Ahmed, a B reader and Board-certified radiologist, read the April 20, 2004 x-ray as positive for pneumoconiosis, while Dr. Rosenberg, a B reader, read the x-ray as negative for pneumoconiosis. Director's Exhibits 51 at 183, 364. The administrative law judge permissibly found the x-ray positive for pneumoconiosis, based on Dr. Ahmed's superior qualifications. *See Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; Decision and Order at 16. Finally, the dually-qualified Dr. Alexander read the June 2, 2005 x-ray as positive for pneumoconiosis, while Dr. Broudy, a B reader, read the x-ray as negative for pneumoconiosis. Director's Exhibits 51 at 89; Claimant's Exhibit 2. Consistent with his previous analyses, the administrative law judge permissibly found this x-ray to be positive for pneumoconiosis. *See Staton*, 65 F.3d at 55, 59, 19 BLR at 2-271, 2-279-80; *Woodward*, 991 F.2d at 314, 321, 17 BLR at 2-77, 2-87; Decision and Order at 16 . The administrative law judge concluded: "In sum, the two most recent x-rays are positive for pneumoconiosis, while the other three x-rays of record are inconclusive. Therefore, I find that [c]laimant has established clinical pneumoconiosis pursuant to §718.202(a)(1) by a preponderance of the evidence." Decision and Order at 17.

Thus, contrary to the employer's contention, the administrative law judge properly considered both the quantity and the quality of the x-ray readings of record. *See Staton*, 65 F.3d at 55, 59, 19 BLR at 2-271, 2-279-80; *Woodward*, 991 F.2d at 314, 321, 17 BLR at 2-77, 2-87. As substantial evidence supports the administrative law judge's finding that the x-ray evidence established the existence of clinical pneumoconiosis, we affirm

[5] Dr. Barrett interpreted the February 9, 2004 x-ray for quality for purposes only. Director's Exhibit 17.

the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1). *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); *Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87.

Ordinarily, affirmance of the finding that the existence of clinical pneumoconiosis was established by x-ray evidence would obviate the need to review the administrative law judge's finding that the medical opinions also established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). *Dixon v. North Camp Coal Co.*, 8 BLR 1-344, 1-345 (1985). However, in this case, the administrative law judge credited medical opinion evidence that claimant is totally disabled due to legal pneumoconiosis, pursuant to 20 C.F.R. §718.204(c). Decision and Order at 35. Therefore, we will address employer's argument that substantial evidence does not support the administrative law judge's finding that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).[6]

Relevant to the existence of legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge properly found that Drs. Broudy, Rosenberg, Baker, and Patel each opined that claimant suffers from a chronic lung

[6] Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge also considered the opinions of Drs. Broudy, Rosenberg, Patel, and Baker, regarding the existence of clinical pneumoconiosis. The administrative law judge noted correctly, that Dr. Baker diagnosed clinical pneumoconiosis based on an x-ray and coal dust exposure history, and Dr. Patel acknowledged claimant's positive x-ray interpretations, but did not specifically diagnose clinical pneumoconiosis. By contrast, Drs. Rosenberg and Broudy opined that claimant did not suffer from clinical pneumoconiosis. Director's Exhibits 16, 51-4, 51-67, 51-86, 51-167, 51-242, 51-340, 51-360; Employer's Exhibit 1.

The administrative law judge found that the existence of clinical pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(4) as "no physician made a well-reasoned and well-documented diagnosis of clinical pneumoconiosis." Decision and Order at 30. Specifically, the administrative law judge rejected the opinion of Dr. Baker, the only physician to diagnose clinical pneumoconiosis because, although Dr. Baker performed other physical and objective testing, he specifically indicated that his diagnosis of clinical pneumoconiosis was based on claimant's positive x-ray and his history of coal dust exposure. The administrative law judge, therefore, permissibly found that Dr. Baker's opinion was merely a restatement of an x-ray reading, and thus an insufficiently reasoned opinion. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); Decision and Order at 19-20, 30; Director's Exhibit 16; 51 at 6-7.

disease. However, while Drs. Baker and Patel opined that claimant's disease results from a combination of his smoking and coal dust exposure histories, Drs. Broudy and Rosenberg opined that claimant's lung disease is due entirely to smoking. Decision and Order at 10, 30; Director's Exhibits 16, 51-4, 51-67, 51-86, 51-167, 51-242, 51-340, 51-360; Employer's Exhibit 1. The administrative law judge found that the opinions of Drs. Rosenberg and Broudy were not well-reasoned because they were based, in part, on assumptions inconsistent with the Department of Labor's (DOL's) scientific findings. By contrast, the administrative law judge found the opinions of Drs. Baker and Patel to be better reasoned and documented, and thus entitled to greater weight, than the opinions of Drs. Broudy and Rosenberg. Consequently, the administrative law judge found that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4).

Employer argues that the administrative law judge erred in discounting the opinions of Drs. Rosenberg and Broudy on the ground that their opinions are inconsistent with DOL's findings regarding the prevailing medical literature discussed in the preamble to the revised regulations. Employer's Brief at 18. We disagree.

Dr. Rosenberg, who is Board-certified in Internal Medicine and Pulmonary Diseases and Occupational Medicine, examined claimant and obtained pulmonary function and blood gas studies, as well as smoking and coal mine employment histories. Dr. Rosenberg completed an initial report dated April 29, 2004, and was deposed on October 7, 2004. Director's Exhibits 51-146, 51-360. Dr. Rosenberg also completed three supplemental reports, in which he reviewed additional medical records and reiterated his prior conclusions. Director's Exhibits 51-65, 51-167; Employer's Exhibit 1. In his report dated April 29, 2004, Dr. Rosenberg opined that smoking is the sole cause of claimant's chronic obstructive pulmonary disease (COPD), and explained that "with his markedly decreased FEV1%, associated with air trapping, [claimant] does not have the functional pattern of obstruction associated with coal dust exposure." Director's Exhibit 51-363. Dr Rosenberg further explained, citing medical studies, that "a significantly reduced FEV1% does not occur (absent progressive massive fibrosis)." Director's Exhibit 51-363.

Contrary to employer's argument, the administrative law judge permissibly discredited Dr. Rosenberg's opinion, that the miner's obstruction was due to smoking, and not coal dust exposure, in part, because Dr. Rosenberg's statement is inconsistent with DOL's findings that medical studies show that severe obstruction may occur in miners, regardless of the presence of clinical pneumoconiosis. 65 Fed. Reg. at 79943; Decision and Order at 23. In addition, the administrative law judge correctly noted that in comments to Section 718.201, DOL cited with approval studies that report that coal dust exposure does result in decreased FEV1/FVC values. *See* 65 Fed. Reg. 79940, 79943 (Dec. 20, 2000); Decision and Order at 23. Thus, the administrative law judge

acted within his discretion as fact-finder in determining that Dr. Rosenberg's opinion, that claimant's reduced FEV1% indicated that claimant's COPD was due to smoking alone, was entitled to less weight because he relied, in part, on a faulty premise that contradicts legislative fact. Decision and Order at 23, *citing Y.D. v. Diamond May Coal Co.*, BRB No. 08-0176 BLA (2008)(unpub.), slip op. at 6; *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.*, BLR, , BRB No. 08-0671 BLA (June 24, 2009). Thus, we affirm the administrative law judge's determination to discredit Dr. Rosenberg's opinion as rational and supported by substantial evidence. *See Martin*, 400 F.3d at 305, 23 BLR at 2-283; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). As the administrative law judge permissibly found Dr. Rosenberg's opinion to be unreasoned, we need not address employer's additional allegations of error with respect to the administrative law judge's evaluation of Dr. Rosenberg's report. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

We also reject employer's argument that the administrative law judge erred in discrediting the opinion of Dr. Broudy. Employer's Brief at 20. Dr. Broudy, who is Board-certified in Internal Medicine and Pulmonary Diseases, examined claimant and obtained objective studies, in addition to medical, employment and smoking histories. In a report dated June 2, 2005, Dr. Broudy opined that claimant had no evidence of pneumoconiosis or any chronic lung disease caused by inhalation of coal dust, and diagnosed severe chronic airways disease due to cigarette smoking. Director's Exhibit 51 at 242. In a supplemental report dated October 12, 2006, after review of additional medical evidence, Dr. Broudy stated:

> The findings of obstructive airways disease are far more likely to be seen in cigarette smokers, and indeed, this gentleman gave a history of heavy smoking at the rate of up to 2 packs per day for a total of some 40 years. It is unusual for a disabling respiratory impairment to be attributable to coal dust exposure unless the individual has complicated coal workers' pneumoconiosis. There was nothing to suggest in any of the evidence that this gentleman has complicated coal workers' pneumoconiosis.

Id. at 67.

Contrary to employer's contention, the administrative law judge permissibly discredited Dr. Broudy's opinion, in part, because he found that Dr. Broudy's statement "implies that a miner's chronic lung disease is not due to coal dust exposure unless he suffers from complicated coal workers' pneumoconiosis." Decision and Order at 27-28. As discussed above, the regulations do not require a finding of complicated pneumoconiosis before a claimant's impairment can be attributed to coal dust exposure. 65 Fed. Reg. at 79943; Decision and Order at 23. The administrative law judge further

found, within his discretion, that Dr. Broudy's opinion lacked sufficient reasoning because Dr. Broudy did not adequately explain why he believes that coal dust exposure did not contribute to claimant's allegedly smoking-related impairments. *See Eastover Mining Co. v. Williams*, 338 F.3d at 501, 514, 22 BLR at 2-625, 2-649; *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-120 (6th Cir. 2000); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *Clark*, 12 BLR at 1-149, 1-155; Decision and Order at 27; Director's Exhibit 51 at 67, 242. Thus, we affirm the administrative law judge's finding that Dr. Broudy's opinion is inadequately reasoned and documented. As the administrative law judge permissibly found Dr. Broudy's opinion to be unreasoned, we need not address employer's additional allegations of error with respect to the administrative law judge's evaluation of Dr. Broudy's reports. *Kozele*, 6 BLR at 1-382-83 n.4.

We further reject employer's argument that the administrative law judge erred in relying, in part, on the opinion of Dr. Patel to find that claimant established the existence of legal pneumoconiosis. Employer contends that Dr. Patel failed to consider claimant's smoking history and that his opinion is not sufficiently definitive to support claimant's burden of proof. Employer's Brief at 15-17. Employer's contentions lack merit.

In a letter dated August 25, 2006, Dr. Patel indicated that he had been treating claimant since 1999, and specifically stated that he was familiar with both claimant's employment and smoking histories. Director's Exhibit 51-86. Dr. Patel further stated that he had reviewed the recent x-rays, pulmonary function studies, and blood gas studies of record. Director's Exhibit 51-86. Dr. Patel diagnosed a chronic respiratory impairment due, at least in part, to coal dust exposure, stating:

> He has a moderate obstructive ventilatory defect, moderate hypoxemia and chronic bronchitis. He has a cough, sputum production, wheezing and shortness of breath. This would be legal pneumoconiosis. He does have a past history of cigarette smoking, but has not smoked since 2003. This has contributed to some extent to his bronchitis as well as his coal dust exposure. It has been substantially aggravated by his coal dust exposure as it is a known cause of bronchitis and obstructive airway disease.
>
> COPD with moderate obstruction, bronchitis and moderate hypoxemia have all been substantially contributed to and substantially aggravated by coal dust exposure during his coal mine employment and past cigarette smoking history has also been a contributing factor.

Director's Exhibit 51-86.

Noting that Dr. Patel had treated claimant for respiratory conditions for at least seven years, and had based his conclusions on claimant's cigarette smoking and dust exposure histories, symptoms and objective studies, the administrative law judge found that Dr. Patel's opinion, that both coal dust exposure and cigarette smoking contributed to claimant's respiratory impairment and COPD, was "adequately reasoned and documented." Decision and Order at 29.

The United States Court of Appeals for the Sixth Circuit has held that a physician's opinion that a miner's impairment "could be due to a combination of cigarette smoking and coal dust exposure" and that coal dust "contributes to some extent in an undefineable proportion," can constitute substantial evidence sufficient to support a claimant's burden of proving the existence of legal pneumoconiosis. *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 358, 23 BLR 2-472, 2-483 (6th Cir. 2007). In addition, contrary to employer's argument, the administrative law judge did not rely solely on Dr. Patel's treating status to credit his opinion, but explicitly stated that he had considered Dr. Patel's treating status "and Dr. Patel's adequate reasoning and documentation." *See* 20 C.F.R. §718.104(d); *Williams*, 338 F.3d at 513, 22 BLR at 647; Decision and Order at 30. Thus, the administrative law judge permissibly concluded that as Dr. Patel's opinion was based on medical studies, objective data, and other criteria enumerated at 20 C.F.R. §718.202(a)(4), Dr. Patel's diagnosis of legal pneumoconiosis was "adequately reasoned and documented" and entitled to full probative weight. Decision and Order at 29; *Rowe*, 710 F.2d at 251, 255 n.6, 5 BLR at 2-99, 2-103 n.6; *Trumbo*, 17 BLR at 1-85, 1-88-89 n. 4; *Clark*, 12 BLR at 1-149, 1-155. In asserting that Dr. Patel's opinion is not well-reasoned, employer essentially asks the Board to assess the credibility of the doctor's opinion, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Because the administrative law judge's determination is rational and supported by substantial evidence, we affirm the administrative law judge's credibility determination. *See Martin*, 400 F.3d at 302, 305, 23 BLR at 2-261, 2-283; *Clark*, 12 BLR at 1-155.

Employer also asserts that the administrative law judge erred in crediting the opinion of Dr. Baker as to the existence of legal pneumoconiosis. Employer specifically asserts that Dr. Baker's opinion is inadequately explained and does not establish that coal dust played more than an insignificant or *de minimus* role in causing claimant's impairment. Employer's Brief at 12-16. We disagree.

Dr. Baker, who is Board-certified in Internal Medicine and Pulmonary Diseases, examined claimant and obtained a chest x-ray, pulmonary function and blood gas studies, and claimant's medical, employment and smoking histories. In a report dated February 9, 2004, Dr. Baker opined that in addition to clinical pneumoconiosis, claimant suffered from COPD with a moderate obstructive ventilatory defect, based on a decreased FEV1 value; moderate hypoxemia, based on the blood gas study; and chronic bronchitis, based on history. Dr. Baker stated that claimant's COPD, hypoxemia and chronic bronchitis

were due to a combination of coal dust exposure and cigarette smoking, and indicated that both exposures contributed "fully" to his impairment. Director's Exhibit 16. In a supplemental report dated January 22, 2007, Dr. Baker considered a corrected coal mine employment history of fifteen years,[7] and reiterated his prior conclusions that in addition to clinical pneumoconiosis, claimant suffered from chronic obstructive airways disease, with a moderate obstructive defect, moderate hypoxemia, and chronic bronchitis. Director's Exhibit 51-4. Dr. Baker opined that with only fifteen years of coal dust exposure, compared to eighty or ninety pack years of smoking, "smoking would be the primary cause" of claimant's impairment, but added that claimant "has had a significant dust load and this would contribute to some extent as well." Director's Exhibit 51-4.

In evaluating Dr. Baker's opinion, the administrative law judge initially discredited Dr. Baker's diagnosis of chronic bronchitis as being based solely on claimant's reported history, and unsupported by objective medical evidence. *Williams*, 338 F.3d at 514, 22 BLR at 2-649; *see also Cornett*, 227 F.3d at 576, 22 BLR at 2-120; *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6. However, regarding Dr. Baker's additional diagnosis of COPD due, in part, to coal dust exposure, the administrative law judge permissibly found that, because Dr. Baker indicated that he based his finding upon the results of his physical examination, objective testing, and the factors set forth in 20 C.F.R. §718.202(a)(4), and because Dr. Baker had accounted for claimant's coal dust exposure "without ignoring" his significant smoking history, this portion of the physician's opinion was well-reasoned and well-documented and supported a finding of legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); *see Barrett*, 478 F.3d at 358, 23 BLR at 2-483; *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n. 4 (1993); *Clark*, 12 BLR at 1-155; Decision and Order at 20. Because the administrative law judge's determination is rational and supported by substantial evidence, we affirm the administrative law judge's credibility determination.[8] *See Martin*, 400 F.3d at 305, 23 BLR at 2-283; *Clark*, 12 BLR at 1-155.

The administrative law judge correctly analyzed the medical evidence and adequately explained his determination to credit the opinions of Drs. Baker and Patel over the opinions of Drs. Broudy and Rosenberg. We, therefore, affirm the

[7] In his initial report, Dr. Baker noted that claimant had a twenty-three year coal mine employment history and a ninety pack-year smoking history. Director's Exhibit 16.

[8] Because we affirm the administrative law judge's determination that Dr. Baker's opinion was reasoned on the grounds noted herein, we need not address the administrative law judge's additional statement that Dr. Baker's opinion was "consistent with" the rebuttable presumption of 20 C.F.R. §718.203(b), that pneumoconiosis in a miner with ten or more years of coal mine employment arose out of such employment.

administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis in the form of a chronic respiratory impairment arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b).[9] *See Martin*, 400 F.3d at 302, 305, 23 BLR at 2-261, 2-283.

Employer next contends that the administrative law judge erred in finding the medical opinions sufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer asserts that none of the physicians opined that claimant's impairment prevents him from engaging in his usual coal mine employment as a truck driver.[10] Employer's Brief at 25. We disagree.

Evaluating the medical opinions relevant to the issue of total disability, the administrative law judge found that Drs. Baker, Broudy, and Patel did not offer clear opinions as to whether claimant could perform his duties as a truck driver from a respiratory standpoint, and permissibly accorded their opinions less weight on this basis.[11] By contrast, contrary to employer's argument, the administrative law judge

[9] The administrative law judge noted, correctly, that he need not separately determine whether claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b) because that finding was subsumed in his finding of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Kiser v. L & J Equipment Co.*, 23 BLR 1-246, 1-259 n.18 (2006); *Henley v. Cowan & Co.*, 21 BLR 1-147, 1-151 (1999); Decision and Order at 31 n.11.

[10] The administrative law judge noted claimant's testimony that he worked as a truck driver hauling coal, that he had to get in and out of the truck ten to twelve times a day, and changed flat tires on a somewhat regular basis. Decision and Order at 4; Hearing Tr. at 20-22.

[11] Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge noted that in his report of February 9, 2004, Dr. Baker opined that claimant had a moderate pulmonary impairment. Decision and Order at 33; Director's Exhibit 16. In his letter dated January 22, 2007, Dr. Baker stated that claimant "would not have the respiratory capacity to do the work of an underground coal miner, but could possibly do the work of a strip miner if he only had to carry 110 pounds 3 times a week and sit most of the time." Director's Exhibit 51 at 4. The administrative law judge permissibly found Dr. Baker's opinion to be equivocal and accorded it little weight, as Dr. Baker found claimant could not perform the work of an underground miner, but did not address whether claimant could perform his regular employment as a truck driver. *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); Decision and Order at 33.

found that Dr. Rosenberg offered a detailed description of claimant's duties as a truck driver, noting, correctly, that "all of the time he was working, he operated a truck moving coal," and that while his duties did not involve lifting, he occasionally changed tires and performed mechanical work. Director's Exhibit 51 at 269. Dr. Rosenberg opined that claimant's "degree of impairment would render him incapable of performing his previous coal mining job or other similarly arduous types of labor." Director's Exhibit 51 at 270. The administrative law judge permissibly found Dr. Rosenberg's opinion well-reasoned and documented and entitled to probative weight as it is based on an accurate understanding of Claimant's job description and on the objective medical results from a qualifying pulmonary function test. *See Crisp*, 866 F.2d at 179, 185, 12 BLR at 2-121, 2-129; *Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6; *Clark*, 12 BLR at 1-149, 155; Decision and Order at 33. The administrative law judge concluded:

The administrative law judge found that Dr. Broudy noted that claimant was principally employed as a truck driver, and that he also worked as a mechanic and tipple operator. Director's Exhibit 51 at 242, 244; Decision and Order at 33-34. Although Dr. Broudy opined that claimant does not "retain the respiratory capacity to perform the work of an underground coal miner or to do similarly arduous manual labor," the doctor did not state whether he considered that driving a truck was "arduous manual labor." Director's Exhibit 51 at 242, 244; Decision and Order at 33-34. For that reason, the administrative permissibly found Dr. Broudy's opinion to be vague and inconsistent and he accorded it little weight. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6; *Justice*, 11 BLR at 1-94; Decision and Order at 34.

Dr. Patel opined that claimant did not have the respiratory capacity to perform the work of a coal miner based on a pulmonary function study and a blood gas study. Director's Exhibit 51 at 86. The administrative law judge found that while Dr. Patel did not specifically discuss claimant's duties as a truck driver, his opinion was entitled to some weight as it was based on objective studies. *See Crisp*, 866 F.2d at 179, 185, 12 BLR at 2-121, 2-129; *Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); Decision and Order at 34.

Finally, the administrative law judge correctly found that the medical treatment notes of record document claimant's difficulty walking up steps and on level ground, but do not address whether claimant is disabled from performing his usual coal mine employment. Director's Exhibit 35 at 34; Decision and Order at 34. The administrative law judge rationally accorded the treatment notes little weight as total disability was not mentioned in the notes. *Budash v. Bethlehem Mines Corp*., 9 BLR 1-48 and 13 BLR 1-46 (1986) *aff'd on recon.*, 9 BLR 1-10 (1986) (*en banc*); Decision and Order at 34.

> Weighing the medical reports of Drs. Baker, Rosenberg, Broudy, and Patel, and giving the most weight to Dr. Rosenberg's opinion, which was based on an accurate employment history and objective medical testing, I find that [c]laimant has established total disability by a preponderance of the medical report evidence, per §718.204(b)(2)(iv).
>
> In sum, weighing all relevant medical evidence of record, I rely on [the] well-reasoned and well-documented medical opinion of Dr. Rosenberg and the qualifying pulmonary function studies, to find that Claimant has established total disability pursuant to §718.204.

Decision and Order at 34. As the administrative law judge's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) is supported by substantial evidence, it is affirmed. We further affirm the administrative law judge's finding that the evidence, weighed together, establishes total disability pursuant to 20 C.F.R. §718.204(b)(2), as it is supported by substantial evidence. *See Martin*, 400 F.3d at 302, 305, 23 BLR at 2-261, 2-283; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*).

Finally, employer challenges the administrative law judge's determination, pursuant to 20 C.F.R. §718.204(c), that the medical evidence establishes that claimant's total disability is due to pneumoconiosis. Employer's contention has no merit. The administrative law judge rationally discounted the opinions of Drs. Broudy and Rosenberg because they did not diagnose legal pneumoconiosis. *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185-86 (6th Cir. 1997); *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vac'd sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Adams v. Director, OWCP*, 886 F.2d 818, 826, 13 BLR 2-52, 2-63-64 (6th Cir. 1989); Decision and Order at 36. Moreover, as we have held that the administrative law judge permissibly credited the opinions of Drs. Baker and Patel to find that claimant established the existence of legal pneumoconiosis, the administrative law judge rationally relied on their opinions, that claimant's totally disabling impairment is due, in part, to coal dust exposure, to find that claimant is totally disabled due to legal pneumoconiosis. *See Smith*, 127 F.3d at 507, 21 BLR at 2-185-86. Consequently, we affirm the administrative law judge's finding that claimant established total disability due to pneumoconiosis pursuant to Section 718.204(c).

Accordingly, the administrative law judge's Decision and Order-Award of Benefits in Initial Claim is affirmed.

SO ORDERED.

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge