BRB No. 10-0356 BLA

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| RILEY COLLINS (deceased) | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
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| WHITAKER COAL CORPORATION | ) | DATE ISSUED: 03/24/2011 |
| | ) | |
| 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 on Remand of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Ronald E. Gilbertson (K&L Gates LLP), Washington, D.C., for employer.

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

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (03-BLA-5397) of Administrative Law Judge Joseph E. Kane awarding benefits on a claim[1] filed pursuant to

[1] Claimant filed a claim on July 31, 2000. It was denied by a claims examiner on November 13, 2000 because claimant failed to establish any of the elements of entitlement. By letter dated November 22, 2000, claimant requested the withdrawal of

the provisions of Title IV of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Public L. No. 111-148, §1556, 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). This case is before the Board for the second time. In the original Decision and Order, Administrative Law Judge Thomas F. Phalen, Jr. credited claimant with 19 years of coal mine employment, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Judge Phalen found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4)[2] and 718.203(b). Judge Phalen also found that the evidence established a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) and (c). Accordingly, Judge Phalen awarded benefits.

In response to employer's appeal, the Board vacated Judge Phalen's award of benefits and remanded the case to Judge Phalen for a determination of whether claimant's application for federal benefits was timely filed pursuant to 20 C.F.R. §725.308.[3] *Collins v. Whitaker Coal Co.*, BRB No. 05-0397 BLA, slip op. at 3 (Jan. 27, 2006)(unpub.). Nevertheless, in order to promote the efficient adjudication of the case on remand, the Board addressed other arguments raised by employer. Specifically, the Board rejected employer's contention that the July 31, 2000 claim was not properly withdrawn.[4]

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the claim. In a Proposed Decision and Order dated February 9, 2001, the district director granted claimant's request to withdraw the claim. The district director noted that the Order represented a final determination by the Department of Labor (DOL), and that the claim would be deemed withdrawn and considered not to have been filed, if no response was received within 30 days. Claimant filed this claim on February 12, 2001. Director's Exhibit 2. Employer filed a Motion to Remand to the District Director dated January 14, 2002, asserting that the district director should reconsider whether the 2001 claim was a new filing or a request for modification of the November 13, 2000 denial of benefits. By Order dated February 24, 2003, Administrative Law Judge Thomas F. Phalen, Jr. denied employer's motion to remand the case to the district director so that it could seek revision of the February 9, 2001 Order granting claimant's request to withdraw the claim.

[2] Judge Phalen found that the evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2), (3). 2005 Decision and Order at 17, 18.

[3] The Board noted that Judge Phalen made no specific reference to the issue of timeliness. *Collins v. Whitaker Coal Co.*, BRB No. 05-0397 BLA, slip op. at 3 (Jan. 27, 2006)(unpub.).

[4] The Board held that Judge Phalen acted rationally in declining to overturn the district director's February 9, 2001 Proposed Decision and Order granting the withdrawal of the July 31, 2000 claim. *Collins*, BRB No. 05-0397 BLA, slip op. at 4.

*Collins*, BRB No. 05-0397 BLA, slip op. at 4. Further, the Board affirmed Judge Phalen's rejection of employer's request that the evidence from claimant's withdrawn claim be admitted into the record.[5] *Collins*, BRB No. 05-0397 BLA, slip op. at 5. The Board also rejected employer's assertion that Judge Phalen erred in admitting the positive x-ray readings of Drs. Myers and Sundaram as part of claimant's affirmative case because the original films were not submitted to the Department of Labor in accordance with 20 C.F.R. §718.102(c), (d).[6] *Collins*, BRB No. 05-0397 BLA, slip op. at 6. In addition, the Board rejected employer's assertion that Judge Phalen violated its right to due process when he rejected Dr. Dahhan's opinion in his Decision and Order, after admitting the doctor's report at the hearing. *Id*. Hence, the Board affirmed Judge Phalen's decision to reject Dr. Dahhan's medical report. *Id*. The Board also rejected employer's assertion that Judge Phalen erred in failing to include Dr. Barrett's negative reading of a May 29, 2001 x-ray film in his weighing of the x-ray evidence at 20 C.F.R.

[5] The Board agreed with the Director, Office of Workers' Compensation Programs (the Director), that the effect of treating the July 31, 2000 claim as if it had never been filed precluded the automatic inclusion of the evidence from that claim in the record of any subsequently filed claim. *Collins*, BRB No. 05-0397 BLA, slip op. at 5. The Board held that the district director's letter informing claimant that the July 31, 2000 claim was denied did not become a final order under the terms of 20 C.F.R. §§725.309 or 725.310, inasmuch as the withdrawal order was valid. *Id*. The Board therefore concluded that the evidence developed in conjunction with the July 31, 2000 claim was not subject to the provisions allowing for the admission of the evidence submitted with a prior claim or a claim that is the subject of a request for modification. *Id*.

Additionally, the Board rejected employer's assertion that the evidence submitted with the July 31, 2000 claim should be admitted into the record because it was relevant and the evidentiary limitations set forth in 20 C.F.R. §725.414 were not valid. *Id*.

Further, the Board agreed with the Director that, under the facts of this case, the complete pulmonary evaluation that the DOL provided to claimant in support of the claim filed in February 2001 must be made part of the record under 20 C.F.R. §725.406. *Collins*, BRB No. 05-0397 BLA, slip op. at 5-6. Hence, the Board held that Judge Phalen did not err in declining to admit the results of the examination performed at the request of the DOL for the July 31, 2000 claim. *Collins*, BRB No. 05-0397 BLA, slip op. at 6.

[6] The Board affirmed Judge Phalen's admission of the positive x-ray readings of Drs. Myers and Sundaram as part of claimant's affirmative case, inasmuch as employer did not object to the admission of these x-ray readings at the hearing and, thus, waived its right to oppose their admission. *Collins*, BRB No. 05-0397 BLA, slip op. at 6.

§718.202(a)(1).[7] *Collins*, BRB No. 05-0397 BLA, slip op. at 7. Additionally, the Board vacated Judge Phalen's findings at 20 C.F.R. §§718.202(a)(1), (4) and 718.204(c), and remanded the case to Judge Phalen for reconsideration. *Collins*, BRB No. 05-0397 BLA, slip op. at 8-9. Further, the Board noted that Judge Phalen should address whether Dr. Broudy's comments on the significance of the pulmonary function study results indicated a hostility to the definition of legal pneumoconiosis set forth at 20 C.F.R. §718.201 when he reconsiders the evidence relevant to the existence of pneumoconiosis and disability causation. *Collins*, BRB No. 05-0397 BLA, slip op. at 9. Lastly, the Board rejected employer's assertion that Judge Phalen was required to consider Dr. Rosenberg's opinion under Sections 718.202(a)(4) and 718.204(c) on remand, as employer submitted the doctor's report solely for the purpose of rebutting the pulmonary function study and arterial blood gas study evidence obtained on claimant's behalf by the Director, Office of Workers' Compensation Programs (the Director), on May 21, 2001. *Collins*, BRB No. 05-0397 BLA, slip op. at 10. Subsequently, the Board denied employer's Motion for Reconsideration With Suggestion for Rehearing *En Banc* and reaffirmed the Decision and Order dated January 27, 2006. *R.C.* [*Collins*] *v. Whitaker Coal Co.*, BRB No. 05-0397 BLA (Feb. 29, 2008)(unpub. Decision and Order on Recon.).

On remand, the case was reassigned to Judge Kane (the administrative law judge),[8] who found that the claim was timely filed pursuant to 20 C.F.R. §725.308. The administrative law judge found that the evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), (4) and legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge also found that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (4). Employer also challenges the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). Further, employer challenges the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R.

[7] The Board noted that "Dr. Barrett's reading was not part of the DOL evaluation nor was it procured to cure a defect in the x-ray reading done by Dr. Baker [for the complete pulmonary evaluation]." *Collins*, BRB No. 05-0397 BLA, slip op. at 8.

[8] Administrative Law Judge Joseph E. Kane (the administrative law judge) noted that Judge Phalen's retirement was the reason that the case was reassigned to him. 2010 Decision and Order on Remand at 2.

§718.204(c). Claimant[9] responds, urging affirmance of the administrative law judge's award of benefits.[10] The Director has declined to file a substantive response brief in this appeal.[11]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.[12] 33 U.S.C. §921(b)(3), as incorporated into the Act 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 in a miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that he 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 any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111 (1989).

Initially, we will address employer's contention that the administrative law judge erred in finding that this claim was timely filed. Section 422(f), 30 U.S.C. §932(f), and its implementing regulation at 20 C.F.R. §725.308(a), provide that a claim for benefits must be filed within three years of a medical determination of total disability due to pneumoconiosis that has been communicated to the miner. The regulation at Section 725.308(c) provides a rebuttable presumption that every claim for benefits filed under the Act is timely filed. 20 C.F.R. §725.308(c). The question of whether the evidence is

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[9] Claimant died on January 5, 2006.

[10] Employer filed a brief in reply to claimant's response brief, reiterating its prior contentions.

[11] Subsequent to the issuance of the administrative law judge's Decision and Order on Remand, amendments to the Act, which became effective on March 23, 2010, were enacted, affecting claims filed after January 1, 2005. All of the parties responded to the Board's May 18, 2010 Order, which permitted them to submit supplemental briefing in this claim to address the impact, if any, of the 2010 amendments in this case. Because the instant claim was filed before January 1, 2005, the recent amendments to the Act do not apply in this case.

[12] The record indicates that claimant was employed in the coal mining industry in Kentucky. Director's Exhibit 3. Accordingly, the law of the United States Court of Appeals for the Sixth Circuit is applicable. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

sufficient to establish rebuttal of the presumption of timely filing of a claim pursuant to Section 725.308(a) involves factual findings that are appropriately made by the administrative law judge. *See Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149 (1989)(*en banc*). The United States Court of Appeals for the Sixth Circuit stated in *Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001), that it is "employer's burden to rebut the presumption of timeliness by showing that a medical determination satisfying the statutory definition was communicated to the miner" more than three years prior to the filing of the claim. *Kirk*, 264 F.3d at 607, 22 BLR at 2-296.

In considering the timeliness issue, the administrative law judge noted that Dr. Sundaram's June 1995 report and Myers's April 1994 report, opining that claimant had pneumoconiosis and was totally disabled by the disease, were submitted in conjunction with claimant's 1994 claim for state benefits.[13] 2010 Decision and Order on Remand at 3. The administrative law judge determined that Dr. Sundaram's report did not trigger the running of the three-year statute of limitations for filing a claim because it was neither a well-reasoned medical opinion nor directly communicated to claimant. *Id*. at 3-4. The administrative law judge also determined that Dr. Myers's report did not trigger the running of the three-year statute of limitations for filing a claim because it was not communicated to claimant. *Id*. Further, the administrative law judge found that claimant's state claim was dismissed, noting that claimant received disability benefits from the state for a back injury, and not coal workers' pneumoconiosis. *Id*. at 3. Hence, the administrative law judge found that the claim was timely filed pursuant to 20 C.F.R. §725.308.

Employer argues that substantial evidence does not support the administrative law judge's finding that the reports of Drs. Sundaram and Myers failed to trigger the statute of limitations for filing a claim because they were not communicated to claimant. The administrative law judge found that there was no evidence in the record that the reports of Drs. Sundaram and Myers were directly communicated to claimant. The administrative law judge specifically stated:

> Dr. Sundaram's report bears no mailing address. Although the doctor reported [c]laimant's address on the form, I will not infer that [c]laimant received the report simply because of this. As for Dr. Myers's report, it was addressed to [c]laimant's attorney, and the Board has rejected [e]mployer's argument that this communication is imputed to the client.

[13] In a Kentucky Department of Workers' Claims Opinion & Award dated April 23, 1995, Administrative Law Judge J. Landon Overfield noted that "Dr. Sundaram's full report has never been introduced into evidence." Director's Exhibit 7 at 7.

2010 Decision and Order on Remand at 4. The administrative law judge additionally stated that there was no evidence in the record that the opinions of Drs. Sundaram and Myers were communicated to claimant during the course of the litigation in the state claim.

Contrary to employer's assertion, the administrative law judge reasonably found that the record does not reflect that the reports of Drs. Sundaram and Myers were directly communicated to claimant. *W.C.* [*Cook*] *v. Benham Coal, Inc.*, 24 BLR 1-50 (2008); *Adkins v. Donaldson Coal Co*., 19 BLR 1-34 (1993). Further, the administrative law judge reasonably found that the reference to the opinions of Drs. Sundaram and Myers in the decision regarding the state claim does not establish that their opinions were communicated to claimant. *W.C.* [*Cook*], 24 BLR at 1-53; *Adkins*, 19 BLR at 1-42-3. Thus, the reports of Drs. Sundaram and Myers could not trigger the running of the three-year time limit for filing claimant's 2001 claim.[14] *Arch of Ky. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 24 BLR 2-135 (6th Cir. 2009). Employer has not alleged that there is any other medical evidence that could trigger the three-year statute of limitations. Consequently, we affirm the administrative law judge's finding that claimant's claim was timely filed under 20 C.F.R. §725.308.

Next, we address employer's contention that Judge Phalen erred by denying its request to reopen the record for consideration of relevant evidence that was developed in the survivor's claim. While the case was on remand before Judge Phalen, employer filed a motion to dismiss claimant's claim as untimely, or in the alternative, to remand his claim to the district director for consolidation with the widow's claim or for modification proceedings. Claimant filed objections to employer's motion to remand his claim to the district director for consolidation with the widow's claim and employer responded to them. By Order dated July 23, 2008, Judge Phalen denied employer's requests to remand claimant's claim to the district director for consolidation with the survivor's claim and to file additional evidence. The Board has held that where its remand decision did not require reopening the record for additional evidence, the decision whether to admit new evidence is a matter within the discretion of the administrative law judge. *White v. Director, OWCP*, 7 BLR 1-348, 1-351 (1984). In this case, the Board did not require Judge Phalen to reopen the record on remand for additional evidence. Additionally, employer does not point to a significant change in law since the formal hearing in the

[14] In view of our holding that the administrative law judge reasonably found that the record does not reflect that the reports of Drs. Sundaram and Myers were directly communicated to claimant, *W.C.* [*Cook*] *v. Benham Coal, Inc.*, 24 BLR 1-50 (2008); *Adkins v. Donaldson Coal Co*., 19 BLR 1-34 (1993), we need not address employer's assertion that the administrative law judge erred in finding that Dr. Sundaram's report failed to trigger the statute of limitations for filing a claim because it was not well-reasoned.

case.[15] Thus, because Judge Phalen did not abuse his discretion, *Clark*, 12 BLR at 1-153, we reject employer's assertion that Judge Phalen erred by denying its request to reopen the record for consideration of relevant evidence that was developed in the survivor's claim.

Turning to the merits of the case, employer contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of clinical and legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the reports of Drs. Baker, Chaney, and Broudy.[16] Dr. Baker opined that claimant had coal workers' pneumoconiosis, and chronic obstructive pulmonary disease (COPD) and hypoxemia related to coal dust exposure and cigarette smoking. Director's Exhibit 18. Similarly, Dr. Chaney, claimant's treating physician, opined that claimant had coal workers' pneumoconiosis and a chronic dust disease caused by coal dust exposure. Director's Exhibit 15; Claimant's Exhibit 1. By contrast, Dr. Broudy opined that claimant did not have coal workers' pneumoconiosis or a chronic lung disease caused by coal dust exposure. Director's Exhibits 13, 21; Employer's Exhibits 1, 3.

[15] The Sixth Circuit has held that an administrative law judge must reopen the record to permit the introduction of evidence where there is a change in legal standards. *See Peabody Coal Co. v. Ferguson*, 140 F.3d 634, 21 BLR 2-344 (6th Cir. 1998)(Ryan, C.J., concurring); *Cal-Glo Coal Co. v. Yeager*, 104 F.3d 827, 21 BLR 2-1 (6th Cir. 1997).

[16] Employer argues that Dr. Dahhan's opinion should have been admissible. Dr. Dahhan opined that claimant did not have coal workers' pneumoconiosis or a chronic lung disease caused by coal dust exposure. Director's Exhibit 20. In its Decision and Order, the Board affirmed Judge Phalen's decision to reject Dr. Dahhan's opinion because Dr. Dahhan referenced evidence that was not admitted into the record. *Collins*, BRB No. 05-0397 BLA, slip op. at 6 (Jan. 27, 2006)(unpub.); *Collins*, BRB No. 05-0397 BLA, slip op. at 2 (Feb. 29, 2008)(unpub. Decision and Order on Recon.). The administrative law judge did not consider Dr. Dahhan's opinion because the Board affirmed Judge Phalen's decision to reject it. 2010 Decision and Order on Remand at 8. The Board's previous disposition of this issue constitutes the law of the case. Employer does not argue that an exception to the law of the case doctrine applies in this case. Thus, because the law of the case doctrine is applicable and no exception has been demonstrated, we will not revisit the issue of whether the administrative law judge erred in rejecting Dr. Dahhan's opinion because Dr. Dahhan referenced evidence that was not admitted into the record. *See Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984). Thus, we reject employer's assertion that Dr. Dahhan's opinion should have been admissible.

The administrative law judge gave full probative weight to Dr. Baker's opinion that claimant had clinical and legal pneumoconiosis because he found that it was well-reasoned. 2010 Decision and Order on Remand at 7-8. However, the administrative law judge gave little probative weight to Dr. Chaney's opinion that claimant had clinical and legal pneumoconiosis because he found that it was based on an inaccurate smoking history.[17] *Id*. at 7. The administrative law judge also gave little probative weight to Dr. Chaney's opinion because he found that Dr. Chaney did not identify the specific objective clinical tests that were relied on by him to diagnose the disease. *Id*. Further, the administrative law judge gave little probative weight to Dr. Broudy's opinion, that claimant did not have clinical pneumoconiosis, because he found that it was not clear what x-ray readings Dr. Broudy referred to, and the doctor did not address the fact that the May 2001 and November 2001 x-ray readings were reread as positive by a doctor with superior radiological qualifications. *Id*. at 8. In addition, the administrative law judge found that Dr. Broudy's opinion that claimant did not have clinical pneumoconiosis was based on a premise that was contrary to his finding that the x-ray evidence was positive for pneumoconiosis. *Id*. The administrative law judge also gave little probative weight to Dr. Broudy's opinion that claimant did not have legal pneumoconiosis because he found that it was not well-reasoned. *Id*. at 9. Hence, based on his decision to give the most weight to Dr. Baker's opinion, the administrative law judge found that claimant established the existence of clinical and legal pneumoconiosis at Section 718.202(a)(4).

Employer asserts that Dr. Baker's opinion is insufficient to establish the existence of clinical and legal pneumoconiosis because Dr. Baker failed to provide an explanation for his conclusions. In a report dated May 21, 2001, Dr. Baker noted his observations on physical examination of claimant, noted claimant's histories of coal mine employment and cigarette smoking, and reported findings of coal workers' pneumoconiosis 1/0 on chest x-ray, severe obstructive defect on pulmonary function study, severe resting arterial hypoxemia on blood gas study, and normal sinus rhythm on EKG. Director's Exhibit 18. Dr. Baker diagnosed coal workers' pneumoconiosis 1/0, based on an abnormal chest x-ray and coal dust exposure, and COPD and hypoxemia related to coal dust exposure and smoking. *Id*. In a supplemental report dated May 21, 2001, Dr. Baker checked the box marked "yes" to indicate that claimant had an occupational lung disease caused by his coal mine employment. *Id*. Additionally, in a supplemental report dated November 9, 2001, Dr. Baker checked the box marked "yes" to indicate that claimant had a chronic lung disease caused by his coal mine dust exposure. Director's Exhibit 19. As the basis for his diagnosis, Dr. Baker stated, "[illegible] may have effect of coal dust exposure [with] COPD as only symptom. Coal dust exposure is a cause of COPD." *Id*.

[17] The administrative law judge's weighing of Dr. Chaney's opinion was not contested.

In finding that Dr. Baker's opinion, that claimant had clinical pneumoconiosis, was entitled to probative weight, the administrative law judge stated:

> Thus, in addition to considering coal mine employment and chest x-rays, it is apparent that Dr. Baker relied on his examination of [c]laimant, [c]laimant's medical history, his history as a smoker, and objective studies. As in [*Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000),] Dr. Baker's opinion on clinical pneumoconiosis addresses the statutory requirements, notwithstanding Dr. Baker's failure to provide a detailed explanation as to how these factors led him to reach a diagnosis of pneumoconiosis.

2010 Decision and Order on Remand at 8. Further, the administrative law judge found that the combination of Dr. Baker's reliable pulmonary function test, which yielded qualifying values, and his thorough examination of claimant, was a credible basis for Dr. Baker to opine that claimant suffered from legal pneumoconiosis. The administrative law judge therefore found that Dr. Baker's opinion, that claimant had legal pneumoconiosis, was entitled to full probative weight.

Contrary to the administrative law judge's finding, Dr. Baker's opinion, that claimant had clinical and legal pneumoconiosis, is not reasoned. *Clark*, 12 BLR at 1-155. Dr. Baker's report does not contain an explanation for his conclusions that claimant had coal workers' pneumoconiosis, and that claimant's COPD and hypoxemia were caused by coal dust exposure. Director's Exhibits 18, 19. Thus, Dr. Baker's opinion is insufficient to establish the existence of clinical and legal pneumoconiosis. *Clark*, 12 BLR at 1-155. We, therefore, reverse the administrative law judge's finding that the medical opinion evidence established the existence of clinical and legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).[18]

Further, we note that the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) rests on his finding that the medical opinion evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Thus, the administrative law judge's disability causation finding at Section 718.204(c) is affected by the medical opinion evidence at Section 718.202(a)(4).[19] Consequently, because we herein reverse the administrative law judge's

[18] In light of our disposition of the case at 20 C.F.R. §718.202(a)(4), we decline to address employer's assertions regarding the administrative law judge's weighing of Dr. Broudy's opinion, as any error by the administrative law judge in this regard was harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[19] Like his report regarding the issues of clinical and legal pneumoconiosis, Dr.

finding that the medical opinion evidence established the existence of clinical and legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), we also reverse the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).[20]

In light of our reversal of the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), an essential element of entitlement under 20 C.F.R. Part 718, we reverse the administrative law judge's award of benefits. *Anderson*, 12 BLR at 1-112.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is reversed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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Baker's report does not contain any explanation for his conclusion that claimant's coal dust exposure "fully" contributed to his respiratory impairment. Director's Exhibit 18; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

[20] In view of our disposition of the case at 20 C.F.R. §§718.202(a)(4) and 718.204(c), we need not address employer's contention that the administrative law judge erred in finding that the x-ray evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), as any error by the administrative law judge in this regard was harmless. *Larioni*, 6 BLR at 1-1278.