BRB No. 10-0430 BLA

MELVIN DOUGLAS ARNOLD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CENTRAL OHIO COAL COMPANY	)	DATE ISSUED: 03/23/2011
	)	
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 Award of Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand Award of Benefits (2005-BLA-6281) of Administrative Law Judge Joseph E. Kane (the administrative law judge) rendered on a claim filed on August 23, 2004, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148,

§1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). This case is before the Board for the second time.

In the first Decision and Order on this case, Administrative Law Judge Thomas F. Phalen, Jr., credited claimant with thirty-two years of coal mine employment based on the parties' stipulation, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. He found that the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), that claimant was entitled to the presumption that his pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b), that claimant was totally disabled at 20 C.F.R. §718.204(b)(2)(iv), and that claimant's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). Accordingly, he awarded benefits.

Pursuant to employer's appeal, the Board vacated Judge Phalen's finding of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and remanded the case for further consideration thereunder.[1] *M.D.A.* [*Arnold*] *v. Central Ohio Coal*, BRB No. 07-0719 BLA (July 17, 2008) (unpub.). In particular, the Board held that the administrative law judge illogically credited Dr. Knight's opinion, that claimant had bronchial asthma caused, in part, by coal dust exposure, without first weighing the conflicting evidence of record and determining whether claimant suffered from the condition. Additionally, the Board observed that Drs. Rosenberg and Spagnolo both opined that claimant had no respiratory or pulmonary condition significantly related to, or substantially aggravated by, coal dust exposure. Further, the Board held that since Dr. Spagnolo specifically diagnosed *bronchial asthma that was worsened by smoking and exposure to welding fumes*, the administrative law judge incorrectly stated that no physician of record disputed Dr. Knight's conclusion that bronchial asthma was caused, in part, by coal dust exposure. The Board also held that the administrative law judge improperly substituted his own opinion for that of the medical experts in the following two respects: First, the administrative law judge erred in concluding that claimant's lack of bronchodilator response demonstrated an underlying fixed impairment, consistent with legal pneumoconiosis. Second, the administrative law judge erred in apparently assuming that any decline that occurred in claimant's pulmonary function after he stopped smoking must be attributable, at least, in part, to coal dust exposure. On remand, therefore, the Board instructed the administrative law judge to re-assess the medical opinions, and to

[1] On remand, this case was reassigned to Administrative Law Judge Joseph E. Kane (the administrative law judge), following the retirement of Administrative Law Judge Thomas F. Phalen, Jr. *See* Decision and Order at 2. The administrative law judge adopted the summary of the medical evidence provided in Judge Phalen's decision, which the Board held was accurately summarized. *See* Employer's Petition for Review at 2; Employer's Brief in Support of Petition for Review (Employer's Brief) at 3; *see also M.D.A.* [*Arnold*] *v. Central Ohio Coal*, BRB No. 07-0719 BLA, slip op. at 3 (July 17, 2008) (unpub.).

resolve the conflicts in the evidence.[2] *Arnold*, slip op. at 4. The Board, therefore, held that the finding of legal pneumoconiosis must be vacated and the case remanded for reconsideration of the issue at Section 718.202(a)(4).[3] Further, the Board held that the administrative law judge's findings at Section 718.203(b) and Section 718.204(c) must also be vacated, and that the case must be remanded for reconsideration under those sections, if reached. The Board, however, affirmed the administrative law judge's finding that total respiratory disability was established at Section 718.204(b)(2)(iv).

On remand, the administrative law judge found that the weight of the medical opinion evidence established the existence of legal pneumoconiosis at Section 718.202(a)(4). Further, the administrative law judge found that because claimant established legal pneumoconiosis, he necessarily established that the disease arose out of coal mine employment, and did not have to make a separate showing of causality at Section 718.203. Finally, the administrative law judge found that disability causation was established at Section 718.204(c). Benefits were, accordingly, awarded.

On appeal, employer challenges the administrative law judge's finding that legal pneumoconiosis was established at Section 718.202(a)(4). Employer also contends that, because the administrative law judge erred in finding legal pneumoconiosis established, his findings at Sections 718.203(b) and 718.204(c) cannot be affirmed. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has stated that he will not submit a substantive response unless requested to do so by the Board.[4]

---

[2] Although all five physicians of record opined that claimant suffered from a pulmonary impairment, they each identified multiple risk factors, and differed as to whether, as Dr. Knight believed, claimant suffered from bronchial asthma. Drs. Diaz, Cohen and Knight opined that claimant's impairment was consistent with both his coal mine employment and his smoking history and concluded that his pulmonary impairment was, at least, partially caused by coal dust exposure, and diagnosed legal pneumoconiosis. *Arnold*, slip op. at 3; Claimant's Exhibits 1, 2; Employer's Exhibit 1; Director's Exhibits 8, 10, 11. Drs. Rosenberg and Spagnolo concluded that the pattern of claimant's obstruction was inconsistent with a condition related to coal dust exposure, and that the most likely cause of his airflow obstruction was cigarette smoking and other pulmonary conditions. Director's Exhibit 10; Employer's Exhibits 3, 5.

[3] The Board affirmed the administrative law judge's finding that the evidence failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3). *See Arnold*, slip op. at 2 n.1.

[4] Subsequent to the issuance of the administrative law judge's Decision and Order, amendments to the Act, which became effective on March 23, 2010, were enacted, affecting claims filed after January 1, 2005. As the Director, Office of Workers'

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.[5] 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 establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 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); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Legal Pneumoconiosis – 20 C.F.R. §718.202(a)(4)

Employer contends that the administrative law judge failed to comply with the Board's remand instructions, and with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). Employer challenges the administrative law judge's consideration of the opinions of Drs. Knight, Cohen and Diaz, and argues that the administrative law judge "committ[ed] similar errors [as the prior administrative law judge] in judging the conflicting opinions of record." Employer's Brief at 4, 10-11. Employer also contests the administrative law judge's evaluation of the opinions of Drs. Rosenberg and Spagnolo, and contends that the administrative law judge failed to adequately discuss the conflicting medical opinion evidence on the issue of legal pneumoconiosis at Section 718.202(a)(4).

Compensation Programs, accurately submits, because claimant's claim was filed before January 1, 2005, these amendments to the Act do not apply in this case. *See* Director's Exhibit 2; Director's Response of July 28, 2010 at 2 n. 1.

[5] The law of the United States Court of Appeals for the Sixth Circuit is applicable, as claimant was employed in the coal mining industry in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3; Hearing Transcript at 18.

Dr. Knight

Employer argues that Dr. Knight's medical opinion is insufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4), and contests the administrative law judge's finding that Dr. Knight's opinion is unequivocal and well-reasoned, "given the reservations or uncertainties [the doctor] expresse[d]." *Id.* at 12. Specifically, employer contends that Dr. Knight "assume[d] that any retired miner with [chronic obstructive pulmonary disease (COPD)] developed the COPD from coal dust exposure." *Id*. at 14. Additionally, employer argues that the administrative law judge adopted the "discussion of these same discrepancies in Dr. Knight's opinion" from the previous decision, and failed to explain "what impact these inconsistencies might have on the overall credibility of Dr. Knight's overall opinion." *Id*. at 12. As a consequence, employer submits that the administrative law judge improperly presumed that "any lung disease is due to coal dust and therefore is legal pneumoconiosis." *Id*. at 15.

Contrary to employer's arguments, the administrative law judge's evaluation of Dr. Knight's opinion complied with the Board's remand instructions, and accorded with the requirements of the APA. Dr. Knight considered the relevant evidence on the issue of whether claimant suffered from the condition of bronchial asthma. Dr. Knight concluded that the miner's respiratory condition constituted legal pneumoconiosis, based on his diagnosis that claimant's bronchial asthma was caused, in part, by his coal mine dust exposure. *See* Decision and Order at 3; s*ee also Arnold*, BRB No. 07-0719 BLA, slip op. at 4. The administrative law judge's analysis was two-fold: First, he concluded that Dr. Knight's diagnosis of asthmatic bronchitis and the diagnosis of an obstructive impairment by Drs. Cohen and Diaz were characterized by airway dysfunction. Decision and Order at 6 n. 3. Second, he credited Dr. Spagnolo's finding that claimant's medical history since the 1970's included bronchial asthma over Dr. Cohen's testimony ruling out asthma, because both Drs. Knight and Rosenberg diagnosed asthma, and Dr. Spagnolo "had the opportunity to review more of the medical evidence than Dr. Cohen." *Id*. Accordingly, employer's assertion that the administrative law judge failed to resolve whether the record supported a diagnosis of bronchial asthma is without merit.

Next, employer argues that, because Dr. Knight failed to explain how claimant's coal mine employment was a contributing factor to his pulmonary impairment, his opinion was insufficient, as a matter of law, to establish legal pneumoconiosis. Employer contends that Dr. Knight's opinion was too equivocal to affirmatively establish the presence of legal pneumoconiosis, based on his failure to definitively identify the cause of claimant's pulmonary impairment, rather than merely attributing it to both cigarette smoking and coal dust exposure.

Employer's arguments are premised on the erroneous assumption that a physician's opinion must specify the relative contributions of coal dust exposure and cigarette smoking, in order to establish that claimant's respiratory impairment constitutes

legal pneumoconiosis. *See Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003). The administrative law judge particularly noted that Dr. Knight considered a smoking history of thirty to forty pack years, rather than the actual history of twenty-six and one-half pack years, and "still attributed the impairment in part to coal dust exposure." Decision and Order at 3. On deposition, Dr. Knight testified that claimant's pulmonary function study demonstrated a moderate, non-reversible obstructive defect. Director's Exhibit 10 at 50-53. The doctor considered his entire pulmonary review of claimant, took into account the fact that claimant's symptoms became more severe during the time when he had ceased smoking, but still had coal dust exposure, and concluded that the two exposures of smoking and coal dust caused the pulmonary impairment in this case. *Id.* Specifically, Dr. Knight estimated a co-equal, or 50/50, ratio of smoking and coal dust exposure accounting for claimant's pulmonary impairment. *Id.* at 52-53. Further, Dr. Knight explained why attribution of claimant's asthmatic bronchitis to an idiopathic, or unknown etiology, was not indicated in this case. *Id.* at 53-54.

In assessing the probative value of the medical opinion evidence, the administrative law judge determined that Dr. Knight unequivocally linked claimant's pulmonary impairment to both cigarette smoking and coal mine dust exposure and, within a proper exercise of his discretion, found that Dr. Knight's opinion was sufficient to affirmatively establish the existence of legal pneumoconiosis. Decision and Order at 14-16, 18; 20 C.F.R. §718.201(b); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000). In this case, therefore, we conclude that the administrative law judge appropriately determined that Dr. Knight's identification of coal dust exposure as a cause of claimant's pulmonary impairment is supported by his objective medical documentation, and constituted a well-reasoned opinion. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). A physician need not precisely identify the portion of impairment attributable to coal dust exposure. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *see Crockett Collieries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Cornett*, 227 F.3d at 576, 22 BLR at 2-121. Rather, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that a physician's opinion attributing a miner's lung disease to both cigarette smoke and coal dust exposure is sufficient to support a finding of legal pneumoconiosis, as a miner is "not required to demonstrate that coal dust was the *only* cause of his current respiratory problems," but need show only that his lung disease was "significantly related to, or substantially aggravated by, coal mine dust exposure." *Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *accord Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 2-372 (4th Cir. 2006); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483, 22 BLR 2-265, 2-281 (7th Cir. 2001); *see also Southard v. Director, OWCP*, 732 F.2d 66, 6 BLR 2-26 (6th Cir. 1984). Contrary to employer's argument, therefore, Dr. Knight's explanation as to why he was unable to apportion the effects of claimant's two significant

exposures,[6] namely coal dust and cigarette smoking, did not render his opinion unacceptably equivocal, or shift the burden of proof, but constituted a permissible acknowledgement that the effects of smoking versus coal dust exposure cannot necessarily be medically differentiated.[7] *Barrett*, 478 F.3d at 356, 23 BLR at 483-484. Because the administrative law judge's determination, that Dr. Knight's opinion was sufficient to establish the existence of legal pneumoconiosis, was rationally based on permissible credibility determinations, and was adequately explained, we reject employer's arguments, and affirm the administrative law judge's findings regarding Dr. Knight's opinion. Decision and Order at 3, 6; *see* 20 C.F.R. §718.201; *Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Williams*, 453 F.3d at 622, 23 BLR at 2-372; *Gross*, 23 BLR at 1-18; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

Dr. Diaz

Employer also challenges the administrative law judge's determination to assign "full probative weight" to the opinion of Dr. Diaz, who diagnosed COPD caused by coal dust exposure. Decision and Order at 4-5. According to employer, Dr. Diaz's opinion is deficient in various respects, namely: it is unsupported by objective evidence, hostile to the Act, and Dr. Diaz "asserts that any functional decline in a non-smoking miner must be due to coal dust exposure." Employer's Brief at 18. The administrative law judge found that Dr. Diaz's consultative report was based on claimant's smoking and coal mine employment histories, the objective testing and the medical evidence of record. Decision and Order at 5-6. Additionally, the administrative law judge noted Dr. Diaz's observation that claimant's functional status and respiratory symptoms progressively declined after he stopped smoking, and Dr. Diaz's conclusion that claimant's coal dust exposure "resulted in a degree of COPD substantially worse than he would have had from smoking alone."[8] *Id*. at 5; Claimant's Exhibit 1. A review of Dr. Diaz's report reflects his conclusion that claimant has, at least, moderate COPD and "substantial airflow

[6] Dr. Knight stated that he does not know "any way to delineate between the two." Director's Exhibit 10 at 52.

[7] We reject employer's assertion that the administrative law judge erred in relying on *Crockett Collieries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007), to credit Dr. Knight's opinion because that case dealt with the presumption at 20 C.F.R. §718.203. *See* Employer's Brief at 14; Decision and Order at 3, 5-6. That case also dealt with the establishment of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge, therefore, properly considered the case in determining whether the administrative law judge found legal pneumoconiosis established at Section 718.202(a)(4).

[8] Dr. Diaz considered that claimant's smoking ceased in 1976, while his coal dust exposure continued until 2001. Claimant's Exhibit 1.

obstruction," as evidenced by FEV_1 value, in a degree "disproportionate to his smoking history." *Id*. at 1.

Contrary to employer's argument, the record reflects that Dr. Diaz's opinion is based on his analysis of claimant's specific testing results and entire medical record and health history. Employer's characterization of the medical opinion as "needlessly overly accommodating," "a bare conclusion," and hostile to the Act, is, therefore, unfounded. Substantial evidence supports the administrative law judge's findings regarding Dr. Diaz's opinion and they are affirmed. *Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Williams*, 453 F.3d at 622, 23 BLR at 2-372; *Gross*, 23 BLR at 1-18.

Dr. Cohen

Next, employer challenges the administrative law judge's determination to assign "full probative weight" to Dr. Cohen's diagnosis of legal pneumoconiosis. Decision and Order at 5. Employer argues that the administrative law judge failed to explain his reasoning, or to analyze and resolve the conflicts in Dr. Cohen's opinion. In support of this argument, employer avers that: "Dr. Cohen agreed he could not distinguish between smoking and coal dust-induced diseases.…An expert who admits he cannot distinguish as to the cause of COPD cannot produce an opinion which is sufficient to establish that COPD arose out of coal mine employment." Employer's Brief at 20-21. Further, employer argues that Dr. Cohen's medical opinion, that coal dust exposure was a "significant factor" in claimant's impairment, is deficient because his "belief that asthma is not present is contrary to the evidence of record." *Id*. at 21-23.

The administrative law judge found that Dr. Cohen provided a well-reasoned and well-documented opinion based on the objective evidence of record, including claimant's smoking, coal mine employment and health histories, physical examination, and his review of the report of Dr. Rosenberg and the deposition of Dr. Knight. Decision and Order at 3. Moreover, the administrative law judge recognized that Dr. Cohen erred in finding that claimant's medical records did not include a diagnosis of asthma.[9] *See* Decision and Order at 6; Employer's Exhibit 1 at 50-51. Thus, contrary to employer's objection, because the administrative law judge acknowledged the discrepancy between the diagnosis of asthma in the evidentiary record and Dr. Cohen's contrary finding, we conclude that he reasonably credited Dr. Cohen's diagnosis of legal pneumoconiosis based on the totality of Dr. Cohen's opinion. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

[9] Dr. Cohen diagnosed a "moderate obstructive irreversible ventilatory impairment, chronic air flow obstruction." Employer's Exhibit 1 at 37, 66.

The administrative law judge also found that Dr. Cohen's inability to "specifically apportion the extent to which coal dust exposure, as opposed to smoking, contributed to claimant's respiratory impairment" did not preclude assigning credence to the opinion on the issue of legal pneumoconiosis. Decision and Order at 3; s*ee* Employer's Exhibit 1 at 53-54. Because a physician need not precisely identify the portion of impairment attributable to coal dust exposure, 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *see Barrett*, 478 F.3d at 350, 23 BLR at 2-472; *Williams*, 338 F.3d at 501, 22 BLR at 2-625; *Cornett*, 227 F.3d at 569, 22 BLR at 2-107, Dr. Cohen's opinion that claimant's smoking history and his coal dust exposure were "very significant contributors to his impairment," constitutes substantial evidence to support the administrative law judge's determination that Dr. Cohen's opinion established legal pneumoconiosis. *See Justice*, 11 BLR at 1-94.

Based on the foregoing, we affirm the administrative law judge's determination to credit Dr. Cohen's opinion, that claimant suffers from an obstructive impairment due to smoking and coal mine employment, as supported by substantial evidence, and within his discretion as fact-finder to assess evidence, examine the validity of an opinion's supporting rationale, and draw reasonable conclusions. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *see also Martin v. Ligon Preparation Co.*, 400 F.3d 302, 23 BLR 2-261 (6th Cir. 2005).

Dr. Rosenberg

Employer challenges the administrative law judge's findings that Dr. Rosenberg's opinion "failed to address claimant's residual impairment or explain why partial reversibility establishes that claimant's impairment was caused entirely by smoking," and is at variance with the premises underlying the regulations. Employer's Brief at 24-25. According to employer, Dr. Rosenberg's opinion established that claimant's pulmonary impairment was variable in nature, and therefore was "inconsistent with that associated with a chronic coal mine dust-induced lung disease, but more likely the result of the smoking[-]induced airways disease with a possible asthmatic component." Employer's Brief at 23. Employer submits that "Dr. Rosenberg has explained that the FEV_1/FVC ratio is not substantially reduced in coal mine dust-induced obstructive diseases." *Id*. at 24. Employer avers that the administrative law judge improperly interpreted medical evidence and subjected Dr. Rosenberg's opinion to a more searching scrutiny than he utilized in reviewing the contrary opinions of Drs. Knight, Cohen and Diaz. *Id*. at 26.

We disagree. The administrative law judge evaluated Dr. Rosenberg's rationale attributing claimant's pulmonary impairment to smoking, and his opinion that "when coal dust causes the impairment, the FEV_1/FVC ratio is generally preserved, while the measurement is typically reduced in smoking-related forms of obstructive airways disease." Decision and Order at 4. The administrative law judge found that Dr. Rosenberg's "use of [c]laimant's diminished FEV_1/FVC to determine the etiology of [c]laimant's respiratory impairment" to be troubling, and rejected his etiology opinion.

Id. at 4-5. The administrative law judge's role encompasses a determination of whether the medical opinions coincide with the views of the Department of Labor (DOL) in promulgating the regulations. *See generally Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002). Because the regulations recognize that coal dust can cause clinically significant obstructive disease in the absence of clinical pneumoconiosis, and that they allow miners to establish disability due to pneumoconiosis based on a reduced FEV_1/FVC ratio, the administrative law judge rationally assigned "no weight" to Dr. Rosenberg's opinion on the etiology of claimant's impairment. Decision and Order at 4-5; s*ee* 65 Fed. Reg. 79920, 79939 (Dec. 20, 2000); *Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999); *Roberts & Schaefer Co. v. Director, OWCP* [*Williams*], 400 F.3d 992, 999, 23 BLR 2-302, 2-318 (7th Cir. 2005) (administrative law judge may discount a medical opinion that is influenced by the physician's "subjective personal opinions about pneumoconiosis which are contrary to the [c]ongressional determinations implicit in the Act's provisions."). In so doing, the administrative law judge reasonably exercised his discretion to discount medical opinions that conflict with the premises underlying the regulations. *See J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125 (2009) (whether a medical opinion is supported by accepted scientific evidence, as determined by the DOL, is a valid criterion in deciding whether to credit the opinion).

The administrative law judge also permissibly found Dr. Rosenberg's opinion unpersuasive because the physician failed to explain his reliance on the reversible component of claimant's obstructive disease to rule out legal pneumoconiosis, and failed to address the residual impairment. Decision and Order at 5; *see Barrett*, 478 F.3d at 356, 23 BLR at 2-472. Accordingly, the administrative law judge's rejection of Dr. Rosenberg's opinion was rational, and it is affirmed.

Dr. Spagnolo

Employer next challenges the administrative law judge's determination that Dr. Spagnolo's opinion, that the evidence was insufficient to establish pneumoconiosis, was equivocal and failed "to explain why claimant's pulmonary impairment was not significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 5. The administrative law judge reviewed Dr. Spagnolo's statements, that claimant's smoking "*likely* contributed to and worsened his asthma[,]" and that his "long exposure to welding fumes *likely* contributed to and worsened his asthmatic condition." *Id*. at 5 [emphasis added]. Contrary to employer's argument, the administrative law judge's characterization of Dr. Spagnolo's statements as equivocal and his consequent finding that the opinion was entitled to little weight was rational. *See Justice*, 11 BLR at 1-94; *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Finally, in finding that Dr. Spagnolo failed to explain "why claimant's pulmonary impairment was not significantly related to, or substantially aggravated by, dust exposure in coal mine employment," the

administrative law judge did not improperly require the physician to "rule out all causes of disease," as employer argues. Decision and Order at 5, 12. A medical opinion may be discredited for failure to satisfactorily address whether a miner's coal dust exposure was an aggravating or contributing cause of his pulmonary impairment, or for failure to sufficiently explain a conclusion that cigarette smoking was the sole and exclusive cause of impairment. *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Gross*, 23 BLR at 1-19-20. Accordingly, we affirm the administrative law judge's finding regarding the opinion of Dr. Spagnolo.

Based on the foregoing, we affirm, as supported by substantial evidence, the administrative law judge's finding that the most probative evidence of record established the existence of pneumoconiosis pursuant to Section 718.202(a)(4).[10] *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 23 BLR 2-261 (6th Cir. 2005); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Contrary to employer's argument, the administrative law judge has complied with the Board's remand instructions and the requirements of the APA.

Disability Causation - 20 C.F.R. §718.204(c)

Finally, employer argues that the administrative law judge erred in finding that claimant's totally disabling respiratory impairment was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Specifically, employer asserts that the administrative law judge erred in discrediting the opinions of Drs. Spagnolo and Rosenberg, and in assigning probative weight to the opinions of Drs. Knight, Cohen, and Diaz. Employer argues that the finding of legal pneumoconiosis constitutes a flawed "predicate" to the administrative law judge's determinations that the credited medical opinion evidence established disease etiology and disability causation. Employer's Brief at 29. We disagree. We have affirmed, as discussed *supra*, the administrative law judge's credibility determinations in concluding that the opinions of Dr. Knight, Cohen and Diaz established the existence of legal pneumoconiosis at Section 718.202(a)(4). Consequently, contrary to employer's assertion, the administrative law judge acted within his discretion in discounting the opinions of Drs. Rosenberg and Spagnolo as to the etiology of claimant's totally disabling respiratory impairment, because they did not diagnose legal pneumoconiosis. Decision and Order at 6-7; *see 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); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986).

[10] The administrative law judge's finding that the existence of legal pneumoconiosis was established at 20 C.F.R. §718.202(a)(4) encompasses a finding that claimant's pneumoconiosis arose out of coal mine employment. *Kiser v. L & J Equipment Co.*, 23 BLR 1-246, 1-257 n. 18 (2006). The administrative law judge is not required, therefore, to independently establish that claimant's pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203.

Further, contrary to employer's assertion, the administrative law judge rationally credited the opinions of Drs. Knight, Cohen and Diaz, as to disability causation, for the same reasons he credited their opinions on the issue of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). As stated above, substantial evidence supports the administrative law judge's credibility findings, his assessment of the medical evidence of record, and his resolution of evidentiary conflicts in the medical opinion evidence. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Consequently, we affirm his determination that the medical opinion evidence was sufficient to establish total disability due to pneumoconiosis under Section 718.204(c). Hence, the administrative law judge properly found that claimant was entitled to benefits. *See Trent*, 11 BLR at 1-27; *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Accordingly, the administrative law judge's Decision and Order on Remand Award of Benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge