U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0230 BLA

VINCENT J. SLONE, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HARMAN BROTHERS COAL COMPANY, INCORPORATED	)	
	)	
	)	
and	)	DATE ISSUED: 03/14/2018
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
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 Awarding Benefits in Subsequent Claim of Morris D. Davis, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and M. Rachel Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

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

Before: HALL, Chief Administrative Appeals Judge, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits in Subsequent Claim (2013-BLA-05241) of Administrative Law Judge Morris D. Davis, rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on December 27, 2011.[1]

The administrative law judge initially found that the claim was timely filed pursuant to 20 C.F.R. §725.308(c), and credited claimant with 11.46 years of coal mine employment, as conceded by employer. Because claimant had fewer than fifteen years of coal mine employment, the administrative law judge found that he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge further found, however, that the new evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2), and, therefore, established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). Weighing the old and new evidence together, the administrative law judge also found that the evidence established the existence of legal pneumoconiosis[3] pursuant to 20 C.F.R. §718.202(a)(4) and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that the new evidence established total disability and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §§718.204(b)(2), 725.309(c). Employer also argues that

[1] The current claim is claimant's fifth. Director's Exhibit 4. Claimant's most recent prior claim, filed on November 25, 2009, was denied by the district director on June 21, 2010, for failure to establish the existence of pneumoconiosis and total disability. Director's Exhibit 2. Claimant did not further pursue his prior claim.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the claimant establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] "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). "Clinical pneumoconiosis" consists of "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).

the administrative law judge erred in finding that all of the evidence of record established the existence of legal pneumoconiosis and total disability due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c). Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief in this appeal. Employer filed a reply brief, reiterating its contentions on 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.[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).

When a miner files an application for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied because he did not establish the existence of pneumoconiosis and a totally disabling respiratory or pulmonary impairment. Director's Exhibit 2. Consequently, to obtain review on the merits of his current claim, claimant had to submit new evidence establishing that he has one of these conditions of entitlement. *See* 20 C.F.R. §725.309(c). The administrative law judge found a change in an applicable condition of entitlement based on the new evidence establishing total disability.

Change in an Applicable Condition of Entitlement-Total Disability

The regulations provide that a miner is considered totally disabled if his respiratory or pulmonary impairment, standing alone, prevents or prevented him from performing his usual coal mine work.[6] *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that the claim was timely filed pursuant to 20 C.F.R. §725.308 and that claimant established 11.46 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit as claimant's last coal mine employment was in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1, 2, 5, 7.

[6] At the hearing, claimant testified that he worked as a roof bolter, "shot coal," and ran the bolting machine. Hearing Tr. at 18-19. Claimant also testified that all of his work

evidence, a miner's disability is established by: 1) pulmonary function studies showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718; 2) arterial blood gas studies showing values equal to or less than those listed in Appendix C to 20 C.F.R. Part 718; 3) medical evidence showing that the miner has pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or 4) the opinion of a physician who, exercising reasoned medical judgment, concludes that a miner's respiratory or pulmonary condition is totally disabling, based on medically acceptable clinical and laboratory diagnostic techniques. 20 C.F.R. §718.204(b)(2)(i)-(iv). Employer argues that the administrative law judge erred in finding that the pulmonary function study and medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv).[7]

Pulmonary Function Studies

When considering pulmonary function study evidence pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge must determine whether the studies are in substantial compliance with the quality standards. 20 C.F.R. §718.103(c); *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987); *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (en banc). If a study does not precisely conform to the quality standards, but is in substantial compliance, the administrative law judge must determine whether it constitutes credible evidence of claimant's pulmonary function. *Siwiec*, 894 F.2d at 638, 13 BLR at 2-265; *see Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-5 (1987) (Levin, J., concurring). In accomplishing this task, the administrative law judge must consider all relevant evidence, resolve any conflicts as to the reliability of the testing, and explain his findings in compliance with the Administrative Procedure Act (APA).[8] *See*

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was underground and required lifting heavy objects, including an auger weighing 50 pounds, during his last year of employment. *Id*. at 19-20. Based on claimant's unrebutted testimony, the administrative law judge found that claimant's last coal mining job required heavy manual labor. Decision and Order at 4 n.7. Thus, there is no merit to employer's contention that the administrative law judge did not determine the functional demands of claimant's usual coal mine work. Employer's Brief at 15.

[7] The administrative law judge found that the new blood gas studies do not support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 18. The administrative law judge also found that the record contains no evidence of cor pulmonale with right-sided congestive heart failure; therefore, total disability could not be established pursuant to 20 C.F.R. §718.204(b)(2)(iii). *Id*.

[8] The Administrative Procedure Act, 5 U.S.C. §§500-596, as incorporated into the Act by 30 U.S.C. §932(a), provides that every adjudicatory decision must be accompanied

Wojtowicz v. Duquesne Light Co., 12 BLR 1-162, 1-165 (1989). Moreover, the administrative law judge cannot substitute his opinion for that of the medical experts. *See Mancia v. Director, OWCP*, 130 F.3d 579, 588, 21 BLR 2-215, 2-234 (3d Cir. 1997); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987).

The administrative law judge considered the results of five pulmonary function studies dated February 25, 2012, June 14, 2012, December 6, 2012, February 11, 2013 and April 18, 2013.[9] Director's Exhibits 12, 14; Claimant's Exhibits 1, 4; Employer's Exhibit 3. The administrative law judge found that all five of the pre-bronchodilator pulmonary function studies yielded qualifying[10] values, three of the post-bronchodilator pulmonary function studies also yielded qualifying values, and only one of the post-bronchodilator pulmonary function studies yielded non-qualifying values.[11] Decision and Order at 10, 17; Director's Exhibit 12; Claimant's Exhibits 1, 4; Employer's Exhibit 3.

Considering the validity of the pulmonary function studies, the administrative law judge initially discredited the June 14, 2012 and April 18, 2013 studies administered by Drs. Fino and Rosenberg, respectively, based on the doctors' uncontradicted opinions that

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by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A).

[9] The administrative law judge resolved the height discrepancy recorded on the pulmonary function studies, finding that claimant's average reported height was 70 inches and he would use the closest table height of 70.1 inches for purposes of assessing the pulmonary function studies for total disability. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 10.

[10] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[11] The February 25, 2012, February 11, 2013 and April 18, 2013 pulmonary function studies yielded qualifying values both before and after the administration of a bronchodilator. Director's Exhibit 12; Claimant's Exhibit 4; Employer's Exhibit 3. The December 6, 2012 pulmonary function study also yielded qualifying values before the administration of a bronchodilator, but yielded non-qualifying values after the administration of a bronchodilator. Claimant's Exhibit 1. Finally, the June 14, 2012 pulmonary function study yielded qualifying values before the administration of a bronchodilator; post-bronchodilator studies were not performed. Director's Exhibit 14.

claimant gave incomplete effort.[12] The administrative law judge noted that, at his deposition, Dr. Fino explained that the strokes claimant had prevented him from producing valid results. Decision and Order at 13, 17, *referencing* Employer's Exhibit 11 at 15-16.

The administrative law judge noted that Dr. Fino also invalidated the February 25, 2012, December 6, 2012, and February 11, 2013 pulmonary function studies administered by Drs. Splan, Gallai, and Habre, respectively. The administrative law judge found, however, that Dr. Fino's opinion is not well-reasoned in this regard because he "summarily concluded" that all of the other pulmonary function studies were invalid "without any accompanying reasoning or analysis." Decision and Order at 18. Additionally, the administrative law judge found that Dr. Fino did not attempt to reconcile his assessment of these pulmonary function studies with the statements of the administering physicians that claimant's effort was good. Decision and Order at 18; Director's Exhibit 12; Claimant's Exhibits 1, 4. Deferring to the opinions of the administering physicians "who had the chance to observe Claimant during the tests" and thus were better able to determine whether the results are valid, the administrative law judge found that the preponderance of the pulmonary function studies established total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 18.

Employer asserts that in finding the February 25, 2012, December 6, 2012, and February 11, 2013 qualifying pulmonary function studies administered by Drs. Splan, Gallai, and Habre, respectively, to be probative evidence of disability, the administrative law judge failed to consider all relevant evidence. Employer's Brief at 12-13. Employer contends that the administrative law judge failed to adequately consider the opinions of Drs. Rosenberg and Michos which, employer asserts, support Dr. Fino's conclusion that these tests are invalid due to poor effort. *Id.* at 13. Further, employer argues, the administrative law judge erred in assuming that Drs. Splan, Gallai, and Habre were in a better position than Dr. Fino to assess the validity of the February 25, 2012, December 6,

[12] In his July 12, 2012 report, Dr. Fino stated that the spirometry he performed was invalid because of a premature termination to exhalation and a lack of reproducibility in the expiratory tracings. There was also a lack of an abrupt onset to exhalation. Director's Exhibit 14 at 6. Dr. Fino also invalidated the diffusing capacity results because the inspiratory vital capacity was less than 90% of the forced vital capacity. Finally, he stated that the lung volumes were also invalid. The "Therapist Comments" section of the July 12, 2012 pulmonary function study reflects that claimant had difficulty keeping a tight seal while performing lung volume testing. *Id.*

In his April 22, 2013 report, Dr. Rosenberg stated that the spirometry he performed could not be used as a valid assessment of pulmonary function because of claimant's incomplete efforts. Employer's Exhibit 3 at 6.

2012, and February 11, 2013 pulmonary function studies because they administered the tests. Employer's Brief at 13-14. Employer asserts that the tests were requested by the respective physicians, but were administered by technicians. Employer's Brief at 13. Employer therefore asserts that the evidence in this case is analogous to the evidence in *Peabody Coal Co. v. Director, OWCP* [*Brinkley*], 972 F.2d 880, 885, 16 BLR 2-129, 2-135 (7th Cir. 1992). In *Brinkley*, the United States Court of Appeals for the Seventh Circuit held that a technician's subjective statements about a miner's cooperation and effort on a pulmonary function test cannot offset a consulting physician's uncontradicted opinion based on tracings from the test. There is merit, in part, to employer's contentions.

As employer asserts, the administrative law judge did not address Dr. Rosenberg's statements calling into question the validity of the February 25, 2012, December 6, 2012, and February 11, 2013 qualifying pulmonary function studies.[13] Employer's Exhibits 3, 12. Dr. Rosenberg agreed with Dr. Fino that these studies cannot be used to assess an absolute level of impairment because they were performed with incomplete effort. *Id*. Dr. Rosenberg explained that multiple strokes impaired claimant's ability to adequately perform pulmonary function tests. *Id*. The administrative law judge also failed to address Dr. Michos's report regarding the validity of Dr. Splan's February 25, 2012 study. Director's Exhibit 12. While Dr. Michos indicated by checkmark that the results of the February 25, 2012 pulmonary function study are acceptable, he also noted "suboptimal MVV performance." *Id*. The opinions of Drs. Rosenberg and Michos could support Dr. Fino's conclusion that the February 25, 2012, December 6, 2012, and February 11, 2013 qualifying pulmonary function studies are invalid. Thus, the administrative law judge's conclusion that the pulmonary function studies establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) does not comport with the requirement of the Act that all relevant evidence be considered. *See* 30 U.S.C. §932(b).

Further, the administrative law judge failed to adequately explain his conclusion that Dr. Fino's opinion is not well-reasoned because he "summarily concluded" that the February 25, 2012, December 6, 2012, and February 11, 2013 pulmonary function studies

[13] In his April 22, 2013 report, Dr. Rosenberg reviewed the pulmonary function studies performed by Drs. Fino, Splan, and Gallai and concluded that claimant's "pulmonary function tests were performed with incomplete efforts and cannot be used to assess an absolute level of impairment." Employer's Exhibit 3. He explained that claimant had suffered multiple strokes in the past which were "[o]bviously . . . impairing his ability to adequately perform pulmonary functions." *Id.* In a supplemental report dated March 21, 2016, Dr. Rosenberg reviewed Dr. Habre's pulmonary function study and similarly concluded that claimant's "pulmonary function tests were performed with incomplete efforts" and that claimant "has had multiple strokes which would account for this." Employer's Exhibit 12.

are invalid "without any accompanying reasoning or analysis." Decision and Order at 18; Employer's Exhibit 11. The administrative law judge acknowledged Dr. Fino's explanation that his own study was invalid because claimant's strokes left him unable to put forth sufficient effort to complete the test, resulting in a premature termination to exhalation and a lack of reproducibility in the expiratory tracings. Decision and Order at 12-13. The administrative law judge also acknowledged that Dr. Fino determined that the remaining pulmonary function studies were invalid for the same reasons. Decision and Order at 12-13. In light of these factors, the administrative law judge has not adequately explained his conclusion that Dr. Fino's opinion lacked "any accompanying reasoning or analysis." Decision and Order at 13. Thus, the administrative law judge's evaluation of the pulmonary function study evidence also contravenes the requirement of the APA that the administrative law judge render findings on all material issues of fact or law, and set forth the rationale underlying his findings. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165; Employer's Brief at 13. We therefore vacate the administrative law judge's finding that the new pulmonary function study evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), and remand the case for further consideration. On remand, the administrative law judge must weigh all of the pulmonary function study evidence, as well as evidence bearing on the validity of the testing, and explain his findings.[14]

Medical Opinions

Employer next argues that the administrative law judge erred in weighing the new medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv). The determination of whether a medical opinion is reasoned and documented requires the fact finder to examine the validity of the physician's reasoning in light of studies conducted and the objective indications upon which the opinion is based. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131

[14] Contrary to employer's implication, *Peabody Coal Co. v. Director, OWCP* [*Brinkley*], 972 F.2d 880, 885, 16 BLR 2-129, 2-135 (7th Cir. 1992), regarding the relative weight to be accorded to the opinions of respiratory technicians versus consulting physicians, is not binding precedent in this case arising in the Fourth Circuit. On remand, however, the administrative law judge should consider employer's argument that Drs. Splan, Gallai, and Habre did not personally administer the February 25, 2012, December 6, 2012, and February 11, 2013 pulmonary function studies and, thus, were in no better position than Dr. Fino to assess their validity. While the opinions of consulting physicians may constitute substantial evidence for the rejection of qualifying studies, an administrative law judge must provide a rationale for preferring the opinion of a consulting physician over that of an administering *doctor*. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985) (Brown, J., dissenting) (emphasis added).

F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988) (en banc); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985). While the regulations do not require a physician's diagnosis of total disability to be based on qualifying objective testing, *see* 20 C.F.R. §718.204(b)(2)(iv), a medical opinion based on invalid testing may be found unreliable. *See Mancia v. Director, OWCP*, 130 F.3d 579, 588, 21 BLR 2-215, 2-233-34 (3d Cir. 1997).

The administrative law judge considered the medical opinions of Drs. Splan, Gallai, Habre, Fino, and Rosenberg. While Drs. Splan, Gallai and Habre opined that claimant has a disabling respiratory or pulmonary impairment, Drs. Fino and Rosenberg opined that claimant does not. Director's Exhibit 12; Claimant's Exhibits 1, 4; Employer's Exhibits 3, 11, 12, 14. The administrative law judge determined that, in contrast to the opinions of Drs. Fino and Rosenberg, the opinions of Drs. Splan, Gallai and Habre were consistent with the underlying objective medical evidence, including the qualifying pulmonary functions studies. Decision and Order at 20. Thus administrative law judge found that the opinions of Drs. Splan, Gallai, and Habre were better reasoned than the opinions of Drs. Fino and Rosenberg, and established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv).

As set forth above, the administrative law judge's evaluation of the medical opinions relies upon his finding that the new pulmonary function study evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), a finding we have vacated. Therefore, we must also vacate the administrative law judge's findings that the new medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), and that the new evidence, overall, established total disability at 20 C.F.R. §718.204(b)(2), and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c).

Remaining Elements of Entitlement-

Legal Pneumoconiosis and Disability Causation

Employer next asserts that the administrative law judge's errors in weighing the pulmonary function study evidence also impacted his weighing of the medical opinion evidence relevant to the existence of legal pneumoconiosis[15] and total disability due to pneumoconiosis. We agree. Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the medical opinions of Drs. Splan, Gallai, Habre, Fino and Rosenberg, together with the treatment records of Drs. Modi and Kabaria.

[15] The administrative law judge found that the evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Decision and Order at 22-25.

As the administrative law judge observed, Dr. Splan opined that claimant has legal pneumoconiosis in the form of coal mine dust-related chronic bronchitis and chronic obstructive pulmonary disease based, in part, on a "qualifying [pulmonary function study] that showed moderately severe obstructive and restrictive defects." Decision and Order at 25; Director's Exhibit 12. Similarly, Drs. Gallai and Habre opined that claimant has legal pneumoconiosis in the form of coal mine dust-related chronic bronchitis based, in part, on "[pulmonary function studies] that showed restrictive lung disease." Decision and Order at 25; Claimant's Exhibits 1, 4. In contrast, Drs. Fino and Rosenberg opined that claimant does not have legal pneumoconiosis or "a respiratory or pulmonary disability of any kind" based, in part, on their conclusions that claimant's qualifying pulmonary function studies are invalid. Decision and Order at 25; Director's Exhibit 14; Employer's Exhibits 3, 11, 12.

Finding that the opinions of Drs. Fino and Rosenberg that claimant does not have a respiratory or pulmonary impairment contradicted the weight of the valid, qualifying pulmonary function studies, the administrative law judge determined that "neither report is well-reasoned with respect to [c]laimant's respiratory or pulmonary impairments." *Id*. Thus, the administrative law judge found that the more probative opinions of Drs. Splan, Gallai, and Habre outweighed the opinions of Drs. Fino and Rosenberg, and established the existence of legal pneumoconiosis. As the administrative law judge relied, in part, on his evaluation of the pulmonary function studies, which we have vacated, to find that the medical opinion evidence establishes the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), that finding is also vacated.

Moreover, in view of our decision to vacate 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), we vacate his related finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).

Remand Instructions

On remand, the administrative law judge is instructed to consider whether the new evidence establishes either the existence of pneumoconiosis or total disability and thus a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). In rendering his findings under 20 C.F.R. §718.202(a)(4), the administrative law judge is instructed to evaluate the credibility of the medical opinions in light of the physicians' qualifications and the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of and bases for their conclusions. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-23, 25 BLR 2-255, 2-263 (4th Cir. 2013) (Traxler, C.J., dissenting); *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274. The administrative law judge must explain the bases for all of his findings of fact and credibility determinations in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-162.

With regard to total disability, the administrative law judge should properly identify all of the evidence of record relevant to the validity of the pulmonary function studies. Taking into consideration the physicians' qualifications and the bases for their medical conclusions, the administrative law judge should reach a determination as to the validity of each study and explain the basis for his findings. *See Wojtowicz*, 12 BLR at 1-165. The administrative law judge must then render specific findings as to whether claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv), based on his weighing of the relevant medical evidence of record. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-154 (1989) (en banc). If the administrative law judge finds that the new evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i) or (iv), the administrative law judge must weigh together all of the new evidence relevant to total disability, both like and unlike, to determine whether claimant has established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc).

If the new evidence establishes the existence of legal pneumoconiosis or a totally disabling respiratory or pulmonary impairment, claimant will have established, as a matter of law, a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). Then the administrative law judge must consider whether claimant is entitled to benefits pursuant to 20 C.F.R. Part 718, based on his consideration of all of the record evidence, including that submitted with the previous claims. If, however, the administrative law judge finds that the evidence does not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or total disability pursuant to 20 C.F.R. §718.204(b)(2), he must deny benefits as claimant will have failed to establish an essential element of entitlement under 20 C.F.R. Part 718. *See Trent v Director, OWCP*, 11 BLR 1-26 (1987).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits in Subsequent Claim is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge