BRB No. 08-0632 BLA

R.F.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MANALAPAN MINING COMPANY	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS' MUTUAL INSURANCE	)	DATE ISSUED: 05/18/2009
	)	
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 of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Paul E. Jones and Todd P. Kennedy (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (04-BLA-5888) of Administrative Law Judge Alice M. Craft (the administrative law judge) rendered on a claim filed on July 12, 2002, pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that claimant established: 16.45 years of coal mine employment; the existence of

clinical pneumoconiosis by x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1); the existence of clinical and legal pneumoconiosis by medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4); and that the clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b).[1] The administrative law judge also found that total respiratory disability was established pursuant to 20 C.F.R. §718.204(b)(2), and that claimant's total disability was due to both clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred: 1) in limiting employer's evidence; 2) in finding that the x-ray evidence established clinical pneumoconiosis at Section 718.202(a)(1); 3) in finding that the medical opinion evidence established legal pneumoconiosis at Section 718.202(a)(4); and 4) in finding disability causation established at Section 718.204(c).[2] Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a brief in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law,[3] they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim 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

[1] The administrative law judge found claimant entitled to the presumption that his clinical pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b), based on the length of his coal mine employment. The administrative law judge noted that a finding of causality is subsumed in a finding of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). *See* 20 C.F.R. §718.201.

[2] The administrative law judge's length of coal mine employment finding and her finding that total respiratory disability was established pursuant to 20 C.F.R. §718.204(b)(2) are affirmed, as they are not challenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-170 (1983).

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant was employed in coal mining in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 3.

any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Employer first challenges the administrative law judge's decision limiting employer's medical opinion evidence to the 2005 and 2007 reports of Dr. Dahhan pursuant to 20 C.F.R. §725.414(a)(3)(i). At the hearing in this case, the administrative law judge admitted the medical reports of Drs. Dahhan and Broudy into the record, as employer's two allotted medical reports under Section 725.414(a)(3)(i). Director's Exhibit 32; Employer's Exhibits 2, 4. Subsequently, however, the administrative law judge realized that Dr. Dahhan's report actually consisted of three reports, based on three different evaluations of claimant in 2003, 2005, and 2007. Consequently, the administrative law judge found the medical reports admitted in support of employer's case exceeded the evidentiary limitations under Section 725.414(a)(3)(i). The administrative law judge, therefore, disallowed Dr. Dahhan's 2003 and 2005 reports, leaving only Dr. Dahhan's 2007 report and Dr. Broudy's 2003 report as employer's reports. Director's Exhibits 2, 3, 4. Pursuant to claimant testimony at the hearing, that he had been seeing Dr. Dahhan for treatment, employer filed a post-hearing motion, requesting that Dr. Dahhan's 2005 report be substituted for Dr. Broudy's 2003 report, as one of its allotted medical reports under Section 725.414(a)(3)(i). *See* Motion of May 16, 2007. The administrative law judge granted the motion and admitted Dr. Dahhan's 2005 and 2007 reports as employer's two medical reports under Section 725.414(a)(3)(i). Employer contends, however, that Dr. Dahhan's 2007 evaluation of claimant should have been considered as a continuation of his 2005 evaluation of claimant, and, therefore, that Dr. Dahhan's 2005 and 2007 reports should have been treated as one report. Thus, employer contends that the administrative law judge should have found that Dr. Dahhan's 2005 and 2007 reports constituted only one report and that Dr. Broudy's 2003 report constituted employer's second report. Employer's attorney preserved for appeal the issue of the administrative law judge's exclusion of Dr. Dahhan's additional reports, but did not argue that "good cause" existed at 20 C.F.R. §725.456 for the admission of additional evidence, nor did employer explain why Dr. Dahhan's 2005 and 2007 reports should have been treated as one, other than alleging that the time lapse between the 2005 and 2007 evaluations of claimant justified treating the 2005 and 2007 reports as one.[4] Employer's Brief at 6. *See* 20 C.F.R. §725.456.

The evidentiary limitations are mandatory and a party who fails to argue that "good cause" exists for the admission of additional evidence in support of its case, waives the argument. Decision and Order at 2, n.1; *Smith v. Martin County Coal Corp.*,

[4] The administrative law judge noted that both Dr. Dahhan's 2005 report and his 2007 report indicate that they are based on separate evaluations of claimant at employer's request and neither report reflects any history of ongoing treatment by Dr. Dahhan.

23 BLR 1-169 (2004); *Brasher v. Pleasant View Mining Co.*, 23 BLR 1-141 (2005). Accordingly, because employer failed to argue that good cause exists for the admission of additional evidence in this case either at the hearing or in its post-hearing motion, it has waived the issue. *Id.* Further, other than noting the lapse of time between the examinations, employer has failed to explain why Dr. Dahhan's 2005 and 2007 reports should, in fact, be treated as one. Employer's argument that the administrative law judge erred in limiting its medical evidence is, therefore, rejected. *See generally Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*)(administrative law judge is afforded broad discretion in dealing with procedural matters).

Employer next challenges the administrative law judge's finding that the weight of the x-ray evidence supports a finding of clinical pneumoconiosis at Section 718.202(a)(1). The x-ray evidence in this case consists of an x-ray taken September 19, 2002 that was read as positive for pneumoconiosis by Dr. Alexander, a B reader and Board-certified radiologist, as positive for pneumoconiosis by Dr. Baker, a B reader, and as negative for pneumoconiosis by Dr. Wheeler, a B reader and Board-certified radiologist. Dr. Alexander rated the film quality as "1,"[5] while Dr. Wheeler rated it as quality "3." Dr. Barrett, a B reader and Board-certified radiologist read the film for quality only and rated it as a "1." An x-ray taken June 10, 2005, was read as negative for pneumoconiosis by Dr. Dahhan, a B reader. The most recent x-ray, taken March 20, 2007, was read as positive by Dr. Alexander, who was dually-qualified, and as negative for pneumoconiosis by Dr. Dahhan, who was a B reader.

In evaluating the x-ray evidence, the administrative law judge reasonably determined that the September 19, 2002 x-ray was positive, based on the positive readings of Dr. Alexander, a dually-qualified reader, and Dr. Baker, a B reader. The administrative law judge accorded less weight to Dr. Wheeler's negative reading, even though he was a dually-qualified reader,[6] because he gave the film a quality rating of only "3" and two other dually-qualified readers (Dr. Alexander and Dr. Barrett) gave the film a quality rating of "1." Decision and Order at 12. The administrative law judge correctly determined that the June 10, 2005 x-ray was negative, as its only reading was negative for pneumoconiosis. The administrative law judge reasonably determined that the March

[5] X-ray film quality is rated as 1, 2, 3, or U/R (unreadable), with "1" being the highest in quality and "3" being the least. *See* Claimant's Exhibit 1; Director's Exhibits 12, 14.

[6] Contrary to employer's argument, the administrative law judge was not required to accord greater weight to Dr. Wheeler's negative reading and quality rating of "3" because he was a Harvard-trained physician and an Associate Professor of Radiology at Johns Hopkins Medical Institute. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993).

27, 2007 x-ray was positive, because the positive reading of Dr. Alexander, a dually-qualified reader, outweighed the negative reading of Dr. Dahhan, who was a B reader. Decision and Order at 12. In conclusion, therefore, the administrative law judge reasonably determined that, since two out of the three x-rays were read as positive for pneumoconiosis and the most recent x-ray was read as positive, the existence of clinical pneumoconiosis was established by the x-ray evidence.[7] *See* 20 C.F.R. §718.202(a); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); *see Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). The administrative law judge's finding of pneumoconiosis at Section 718.202(a)(1) is, therefore, affirmed.

Employer next contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis at Section 718.202(a)(4). However, because Section 718.202(a) provides alternative methods of establishing pneumoconiosis, *Dixon v. North Camp Coal Co.*, 8 BLR 1-344, 1-345 (1985), and we have affirmed the administrative law judge's finding that clinical pneumoconiosis was established by the x-ray evidence at Section 718.202(a)(1), we need not address employer's argument as to whether the administrative law judge properly found that the medical opinion evidence established the existence of legal pneumoconiosis at Section 718.204(a)(4).

Nevertheless, we will address employer's argument concerning legal pneumoconiosis, as it is relevant to the administrative law judge's finding that claimant was totally disabled by clinical and legal pneumoconiosis[8] at Section 718.204(c). Employer argues that the administrative law judge should have credited the better reasoned opinion of Dr. Dahhan, that claimant did not have legal pneumoconiosis, over the less reasoned, contrary opinion of Dr. Baker. Dr. Dahhan diagnosed a severe respiratory impairment (severe obstructive defect) resulting from claimant's lengthy smoking history. Dr. Baker diagnosed chronic obstructive pulmonary disease (copd), hypoxemia and chronic bronchitis caused by coal dust exposure and cigarette smoking.

[7] Contrary to employer's contention, even if Dr. Dahhan were claimant's "treating physician," such status does not entitle his x-ray reading to greater weight. *See* 20 C.F.R. §718.202(a)(1); *see also Worhach*, 17 BLR at 1-108.

[8] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

Specifically, employer contends that Dr. Dahhan's 2005 opinion is supported by the results of claimant's testing, *e.g.*, exercise blood gas study results that were normal; pulmonary function study results that reflected significant response to bronchodilator therapy, inconsistent with the permanent adverse effects caused by coal dust exposure; and carboxyhemoglobin test results that indicated that claimant was still smoking, contraindicating his statement that he had quit smoking. Dr. Dahhan, therefore, concluded that claimant's severe partially reversible obstructive ventilatory defect, which is rarely caused by coal dust exposure, resulted from his lengthy smoking habit.

Employer further contends that Dr. Dahhan's 2007 opinion supports a finding that claimant's copd is due to smoking, not coal mine employment. In his 2007 report, Dr. Dahhan opined that claimant's carboxyhemoglobin level showed that claimant smoked one and one-half packs of cigarettes per day, as opposed to the one pack per day claimant reported. Further, Dr. Dahhan again found that claimant's pulmonary function studies demonstrated a significant response to bronchodilator therapy, indicating that claimant's respiratory impairment was due to smoking rather than coal dust exposure, which would cause a fixed defect. Thus, employer contends that Dr. Dahhan's 2007 opinion supports a finding that claimant's respiratory impairment was not due to coal mine employment, and therefore, that he did not have legal pneumoconiosis.

Regarding Dr. Baker's opinion, employer contends that the administrative law judge erred in finding that it established legal pneumoconiosis, as Dr. Baker's opinion was equivocal. Dr. Baker testified, when asked whether he would diagnose legal pneumoconiosis if he found claimant's x-ray evidence to be negative, that claimant "could have legal pneumoconiosis." Thus, employer contends that the administrative law judge erred in finding the existence of legal pneumoconiosis on the basis of Dr. Baker's opinion.

In finding that legal pneumoconiosis was established, the administrative law judge accorded greater weight to the opinion of Dr. Baker because it was more consistent with objective evidence and the premises underlying the regulations, that coal dust exposure can cause copd. *See* 65 Fed. Reg. 79920, 79938 (Dec. 20, 2000). The administrative law judge accorded little weight to Dr. Dahhan's opinion, that claimant's copd was due entirely to smoking, because it was based on the fact that claimant's pulmonary function study results improved after the administration of bronchodilator therapy, but Dr. Dahhan did not explain why, even after the improvement shown on bronchodilator therapy, claimant's pulmonary function study results were still qualifying. In light of this residual disability, the administrative law judge found that Dr. Dahhan did not provide a sufficient explanation for discounting entirely the role that claimant's sixteen plus years of coal mine employment would play in his respiratory impairment. *See Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Further, the administrative law judge accorded little weight to Dr. Dahhan's opinion because Dr. Dahhan opined that coal mine dust exposure does

not cause a significant drop in FEV_1 values, a position contrary to research findings relating to the regulations, which define legal pneumoconiosis as including "any chronic…obstructive pulmonary disease arising out of coal mine employment. 20 C.F.R. §718.201(2)(b).[9] In conclusion, therefore, based on the administrative law judge's analysis, we hold that she properly accorded little weight to Dr. Dahhan's opinion on the existence of legal pneumoconiosis. *See Clark*, 12 BLR at 1-155.

In considering the opinion of Dr. Baker, the administrative law judge properly accorded it probative weight on the issue of legal pneumoconiosis because it was consistent with the objective evidence and the underlying premise of the regulation, that copd can be caused by coal mine employment. The administrative law judge properly found Dr. Baker's opinion reasoned because, even though claimant's blood gas study results were non-qualifying, Dr. Baker noted that claimant's oxygen levels were abnormally low for a man of claimant's age. The administrative law judge further properly noted that Dr. Baker's diagnosis of clinical and legal pneumoconiosis were based on claimant's relevant histories, examination, positive x-ray and qualifying pulmonary function study. Additionally, the administrative law judge properly considered that, contrary to employer's contention, Dr. Baker's opinion was not flawed by an inaccurate coal mine employment history [of twenty-four years], when, in fact, claimant had approximately fifteen years of coal mine employment, because Dr. Baker testified that "anything over [ten] years would be a significant exposure to coal dust." Decision and Order at 14. Moreover, contrary to employer's argument, the administrative law judge was not required to find Dr. Baker's statement that claimant "could have legal pneumoconiosis" to be equivocal. Employer takes Dr. Baker's comment out of context as the doctor appears to have been merely indicating that, even in the absence of clinical pneumoconiosis, claimant could be diagnosed with legal pneumoconiosis. *See* Baker Deposition at 25. In conclusion, therefore, we hold that the

---

[9] The Department of Labor concluded that "[e]ven in the absence of smoking, coal mine dust exposure is clearly associated with clinically significant airways obstruction and chronic bronchitis. **The risk is additive with cigarette smoking**." 65 Fed. Reg. at 79940 (emphasis added). Citing to studies and medical literature reviews conducted by NIOSH, the Department quoted the following from NIOSH:

> COPD may be detected from decrements in certain measures of lung function, especially FEV_1 and the ratio of FEV_1/FVC. **Decrements in lung function associated with exposure to coal mine dust are severe enough to be disabling in some miners, whether or not pneumoconiosis is also present**.

65 Fed. Reg. at 79943 (emphasis added).

administrative law judge properly relied on Dr. Baker's opinion, diagnosing legal pneumoconiosis, as it was more consistent with the underlying objective evidence and the premises of the regulations. *See Clark*, 12 BLR at 1-155; 65 Fed. Reg. at 79938. Accordingly, the administrative law judge's finding of legal pneumoconiosis is affirmed.

Additionally, although not raised by employer, we address the administrative law judge's finding that the medical opinion evidence established the existence of clinical pneumoconiosis, as that finding is relevant to the administrative law judge's finding of disability causation at Section 718.204(c). In finding that the medical opinion evidence established clinical pneumoconiosis, the administrative law judge properly credited Dr. Baker's finding of clinical pneumoconiosis over Dr. Dahhan's contrary finding, because it was supported by a positive x-ray, findings on examination, the results of objective testing, and claimant's history. *See Clark*, 12 BLR at 1-155. The administrative law judge properly gave Dr. Dahhan's opinion, finding that claimant did not have clinical pneumoconiosis, little weight as the March 2007 x-ray he read as negative was subsequently reread as positive by a better qualified physician. *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984). Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence established the existence of clinical pneumoconiosis.

Finally, employer contends that the administrative law judge erred in finding disability causation established at Section 718.204(c). Specifically, employer contends that the administrative law judge erred in his evaluation of the opinions of Drs. Broudy and Baker.

At the outset, we note that employer erroneously relies on the report of Dr. Broudy. Dr. Broudy's report is not in the record. Employer withdrew Dr. Broudy's report, as one of its allotted reports at Section 725.414(a)(3)(i), and substituted Dr. Dahhan's 2005 report when the administrative law judge determined that Dr. Dahhan's 2005 and 2007 reports were separate reports, *see supra* at 4. Employer's argument regarding Dr. Broudy's report is, therefore, rejected.

Additionally, we note that employer does not argue that the administrative law judge erred in according diminished weight to the opinion of Dr. Dahhan on the issue of disability causation, because Dr. Dahhan failed to find that claimant had either clinical or legal pneumoconiosis, contrary to the administrative law judge's own findings. Dr. Dahhan opined that claimant's total disability was not due to either clinical or legal pneumoconiosis, and that his copd was due solely to smoking *See Skukan v. Consolidated Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vacated 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); *see Cornett v. Benham Coal Corp.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Gross v. Dominion*

Coal Corp., 23 BLR 1-8 (2003); *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR 1-19 (1987); *see also Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Toler v. Eastern Assoc. Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995).

Employer does argue, however, that the administrative law judge erred in crediting Dr. Baker's opinion to find disability causation established at Section 718.204(c). Dr. Baker opined that claimant's total disability was caused by both clinical (coal workers' pneumoconiosis) and legal pneumoconiosis (copd due to both smoking and coal mine employment). Employer contends that Dr. Baker's opinion is insufficient to support that finding, because Dr. Baker relied on an incorrect coal mine employment history and an incorrect smoking history.

In crediting Dr. Baker's opinion that the miner was totally disabled by both clinical and legal pneumoconiosis, the administrative law judge noted that Dr. Baker's opinion was based on an examination, a positive x-ray, a blood gas study revealing mild to moderate resting arterial hypoxemia at rest, a pulmonary function study showing moderate obstructive impairment, and claimant's occupational, social, family and medical histories. The administrative law judge further noted that, on deposition, Dr. Baker explained that current medical literature shows a link between an obstructive defect and coal mine dust exposure. Dr. Baker also opined that, with a significant smoking history and a significant coal mine employment history, it is hard to apportion the effects of each. Based on the totality of findings based on examination and testing of claimant, as well as claimant's history and on current medical literature, Dr. Baker opined that the miner's total disability was the result of both his clinical and legal pneumoconiosis.

Employer argues, however, that Dr. Baker's causation opinion is faulty and unreliable because he found that claimant had a coal mine employment history of twenty-four years, when, in reality, claimant had approximately fifteen years of coal mine employment. Employer's Brief at 12. In addressing Dr. Baker's opinion, however, the administrative law judge noted that, although Dr. Baker reported that claimant worked in the mines for twenty-four years, he opined that "anything over 10 years would be a significant history of exposure to coal dust." Decision and Order at 9. Accordingly, contrary to employer's argument, even though Dr. Baker based his causation opinion, in part, on a coal mine employment history of twenty-four years, he nonetheless indicated that a coal mine employment history of over ten years would be sufficient to induce a pulmonary or respiratory impairment. We conclude, therefore, that the administrative law judge did not act unreasonably in relying on Dr. Baker's causation report, as support for a finding at Section 718.204(c), that claimant's clinical and legal pneumoconiosis were disabling, based on Dr. Baker's opinion that a coal mine employment history of over ten years is significant. *See Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988).

Further, employer argues that Dr. Baker's causation opinion was flawed and unreliable, because he underreported claimant's smoking history. Dr. Baker opined that claimant had a one pack per day smoking history, since the age of eighteen. Employer contends, however, that if Dr. Baker had conducted a carboxyhemoglobin test, it would have revealed that claimant was, in fact, smoking one and one-half packs per day, as Dr. Dahhan found on the basis of the results of the carboxyhemoglobin test he conducted. Employer's argument is mere conjecture, however, as Dr. Baker did not conduct a carboxyhemoglobin test. The administrative law judge cannot substitute his opinion for that of the doctor. *See Marcum v. Director, OWCP*, 11 BLR 1-23 (1987). Moreover, we note that the history of smoking recorded by Dr. Baker, *i.e.*, a one pack per day smoking history since the age of eighteen, is the same as that found by the administrative law judge. Decision and Order at 4; Director's Exhibit 12; Claimant's Exhibit 2. We conclude, therefore, that the administrative law judge properly relied on Dr. Baker's causation opinion, given the smoking history relied on by Dr. Baker. *See Gross*, 23 BLR at 1-18; *Clark*, 12 BLR at 1-155.

The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, is emphatic that it is for the administrative law judge as factfinder to "decide whether a physician's report is 'sufficiently reasoned,' because such a determination is 'essentially a credibility matter'." *Wolf Creek Collieries v. Director, OWCP*, 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002) *quoting Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002) (*quoting Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983)). Like the Sixth Circuit, "[w]e recognize that the evidence of record may permit an alternative conclusion, but we defer to the [administrative law judge's] authority in the findings of fact." *Wolf Creek Collieries*, 298 F.3d at 836, 22 BLR at 2-513. Accordingly, we affirm the administrative law judge's finding that Dr. Baker's reasoned medical opinion established that claimant was totally disabled due to his clinical and legal pneumoconiosis at Section 718.204(c).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge