BRB No. 01-0212 BLA

HAROLD L. TERRY Claimant-Respondent v. HOBET MINING, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)))))))))))))))	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order on Remand--Awarding Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

James M. Phemister (Legal Practice Clinic, Washington and Lee University School of Law), Lexington, Virginia, for claimant.

Mary Rich Maloy (Jackson & Kelly PLLC), Charleston, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand--Awarding Benefits (1996-BLA-1383) of Administrative Law Judge Daniel F. Sutton rendered on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety

Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).[1] This claim is before the Board for the second time.

Claimant's first claim for benefits filed on July 1, 1980 was denied on April 18, 1989 by Administrative Law Judge Richard E. Huddleston, who credited claimant with twenty-six years of coal mine employment, found that the existence of pneumoconiosis arising out of coal mine employment was established, but concluded that the medical evidence did not establish that claimant was totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 35. The Board affirmed Judge Huddleston's Decision and Order Denying Benefits on December 19, 1990. Director's Exhibit 35; *Terry v. Hobet Mining & Constr. Co.*, BRB Nos. 89-1650 BLA, 89-1650 BLA-A (Dec. 19, 1990)(unpub.).

Claimant filed his second and current claim on October 18, 1993, which is a duplicate claim because it was filed more than one year after the previous denial of benefits. Director's Exhibit 1; *see* 20 C.F.R. §725.309(d)(2000). After a hearing, Administrative Law Judge Edward Terhune Miller denied the claim on October 4, 1995, because the evidence developed since the previous denial did not establish that claimant was totally disabled and therefore did not establish a material change in conditions as required by 20 C.F.R. §725.309(d)(2000). Director's Exhibit 58.

Thereafter, claimant timely requested modification pursuant to 20 C.F.R. §725.310(2000) and submitted additional medical evidence. Director's Exhibit 63. The District Director of the Office of Workers' Compensation Programs denied modification, claimant requested a formal hearing, and the case was forwarded to the Office of Administrative Law Judges where it was ultimately assigned to Administrative Law Judge Daniel F. Sutton (the administrative law judge). Prior to

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[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, 145 F.Supp.2d 1 (D.D.C. 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). Because of the court's decision, on August 10, 2001 the Board rescinded its supplemental briefing order in this case.

the scheduled hearing, the administrative law judge granted claimant's motion for partial summary judgment on the issue of the existence of pneumoconiosis arising out of coal mine employment, ruling that this issue had been litigated and decided in claimant's favor in the first claim. Administrative Law Judge Exhibit 29. After holding a hearing, the administrative law judge found that the newly submitted medical opinions diagnosing total disability established a change in conditions justifying modification. The administrative law judge additionally found that claimant's total disability was due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

Upon consideration of employer's appeal, the Board vacated the administrative law judge's finding of a change in conditions and remanded the case for him to determine whether the evidence in the duplicate claim plus the new evidence submitted on modification established the requisite material change in conditions pursuant to 20 C.F.R. §725.309(d)(2000). *Terry v. Hobet Mining, Inc.*, BRB Nos. 99-0314 BLA, 99-0314 BLA-A (Mar. 7, 2000), *applying Hess v. Director, OWCP*, 21 BLR 1-141 (1998). The Board additionally held that the administrative law judge erred in applying the doctrine of collateral estoppel to preclude relitigation of the existence of pneumoconiosis, and therefore instructed him to adjudicate this issue if he found a material change in conditions established. [2000] *Terry*, slip op. at 4-5. The Board also vacated the administrative law judge's finding that the medical opinion evidence established total disability and instructed him to reweigh the medical opinions with reference to their underlying documentation and reasoning. *Id.* at 6-7. The Board further instructed the administrative law judge to resolve a dispute among the physicians of record regarding the reliability of claimant's single-breath, carbon monoxide, diffusing capacity tests for total disability. *Id.* Finally, the Board instructed the administrative law judge to weigh together all contrary probative evidence to determine whether claimant is totally disabled, and if he is, to then reweigh the medical opinion evidence to determine whether the total disability is due to pneumoconiosis. *Id.*

On remand, the administrative law judge found that the medical evidence developed since the denial of claimant's first claim established that claimant suffers from a totally disabling respiratory or pulmonary impairment. Consequently, the administrative law judge found that claimant demonstrated a material change in conditions as required by 20 C.F.R. §725.309(d)(2000). *See Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). Specifically, the administrative law judge found that valid and reliable objective tests, including a diffusing capacity test, supported the opinions of physicians who understood that claimant's job as a front-end loader operator required heavy manual labor and who concluded that a moderate pulmonary impairment prevents claimant from performing that job. The administrative law judge further found that when the contrary probative evidence was weighed together, claimant established that he is totally disabled by a respiratory or

pulmonary impairment.

Considering the merits of the claim, the administrative law judge found the existence of pneumoconiosis arising out of coal mine employment established based upon the medical opinions of claimant's treating physicians. The administrative law judge additionally found that the better reasoned medical opinions established that claimant's total disability is due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that substantial evidence does not support the finding of total disability and a material change in conditions. Employer further asserts that the administrative law judge did not properly analyze the chest x-ray evidence, and did not weigh the chest x-rays, CT scans, and medical opinions together to determine whether the existence of pneumoconiosis was established. Additionally, employer argues that the administrative law judge erred in weighing the medical opinions regarding both the existence of pneumoconiosis and whether claimant's total disability is due to pneumoconiosis. Claimant responds, urging affirmance, and the Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, and the subsequent claim is filed prior to January 20, 2001, 20 C.F.R. §725.2(c), the subsequent claim must also be denied unless the administrative law judge finds that there has been a material change in conditions. 20 C.F.R. §725.309(d)(2000). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that pursuant to Section 725.309(d)(2000), the administrative law judge must consider all of the new evidence to determine whether claimant has proven at least one of the elements of entitlement previously adjudicated against him. *Rutter, supra.* If so, claimant has established a material change in conditions and the administrative law judge must then determine whether all of the record evidence, old and new, supports a finding of

entitlement. *Id.*

Claimant's first claim was denied because the record did not establish a totally disabling respiratory or pulmonary impairment. Therefore, on remand the administrative law judge properly considered whether the evidence developed since the prior denial established total disability.

Employer contends that in so doing, the administrative law judge first erred in finding a November 15, 1993 diffusing capacity test to be reliable evidence of a totally disabling respiratory or pulmonary impairment. Employer's contention lacks merit.

The results of a properly reported and validated diffusing capacity test must be weighed along with all other relevant evidence. *Walker v. Director, OWCP*, 927 F.2d 181, 184-85, 15 BLR 2-16, 2-24-25 (4th Cir. 1991). As highlighted by the administrative law judge, Dr. Talat Tawaklna administered a diffusing capacity test during November 15, 1993 pulmonary function testing in which he reported that claimant's cooperation and comprehension were good.[2] Director's Exhibit 14. Dr. Tawaklna interpreted claimant's diffusing capacity as "moderately reduced." *Id.* Subsequently, Drs. Robert A. Cohen, D. L. Rasmussen, and Daniel Doyle interpreted the November 15, 1993 diffusing capacity test as reflecting a significant loss in respiratory function which prevented claimant from performing his usual work as a front-end loader operator. Director's Exhibit 30; Claimant's Exhibits 16, 26, 32.

The administrative law judge also considered Dr. Kirk Hippensteel's opinion that "diffusion test abnormalities can be affected by improper inhalation of test gas that is caused by such things as pain, which this man suffered . . . ." Employer's Exhibit 16 at 2. Dr. Hippensteel was referring to pain experienced by claimant during episodes of recurrent pneumothorax, or lung collapse. However, as the administrative law judge found, claimant's "pain which affected pulmonary function testing occurred in 1995 when the [c]laimant suffered . . . [a] partial pneumothorax. There is simply no evidence that the [c]laimant experienced any pain in November 1993 which might have improperly affected the DLCO testing." Decision and Order on Remand at 7. Substantial evidence supports this finding. The administrative law judge additionally considered Dr. George Zaldivar's testimony that a diffusing capacity test is not reflective of pulmonary function. Tr. at 112-114. Dr. Zaldivar did not contend that Dr. Tawaklna had improperly administered the diffusing capacity test, but merely questioned the utility of diffusing capacity tests generally. Under these circumstances, the administrative law judge properly found that Dr. Zaldivar

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[2] In contrast, Dr. Robert Crisalli administered a diffusing capacity test on September 28, 1994, but reported that this test did not meet "validity criteria." Director's Exhibit 40. Consequently, the administrative law judge found that the September 28, 1994 diffusing capacity test was unreliable. Decision and Order on Remand at 7.

presented no reason for disregarding the results of the November 15, 1993 diffusing capacity test. *See Walker, supra*.

Employer next contends that the administrative law judge erred in according less weight to the opinions of Drs. Crisalli and Hippensteel on the ground that they had an inaccurate understanding of the physical requirements of claimant's usual coal mine employment. Employer does not challenge the administrative law judge's finding that claimant's job as a front-end loader operator regularly required heavy manual labor. Decision and Order on Remand at 9 n.7. Claimant testified that in addition to operating the loader, he regularly had to shovel coal from clogged belt or pan lines and had to break up large lumps of coal with a sledge hammer so that the coal could pass through a grid. Tr. at 41-44.

A miner is considered totally disabled when "a pulmonary or respiratory impairment . . . prevents or prevented the miner: . . . [f]rom performing his or her usual coal mine work." 20 C.F.R. §718.204(b)(1)(i). Thus, "information regarding the miner's exertional work requirements mandates careful consideration . . . where the physician must determine whether an impairment of a certain degree prevents the miner from performing his usual coal mine work." *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172, 21 BLR 2-34, 2-45-46 (4th Cir. 1997).

Having found that claimant's job required him to regularly perform heavy manual labor, the administrative law judge properly accorded greater weight to the opinions of Drs. Rasmussen, Cohen, Doyle, and Talha Imam, that claimant is disabled by his moderate pulmonary impairment, because the administrative law judge found that they had more accurate knowledge of the physical efforts required by claimant's usual coal mine employment. *See Lane, supra*; *Walker*, 927 F.2d at 184, 15 BLR at 2-22. By contrast, as the administrative law judge found, Dr. Crisalli believed that claimant's job merely "involved sitting for about ten hours a day," Director's Exhibit 40 at 6, and Dr. Hippensteel initially did not even discuss the physical requirements of claimant's job. Director's Exhibit 43. The administrative law judge found that when Dr. Hippensteel later learned from Dr. Cohen's report that claimant was required to shovel coal and wield a sledge hammer, "Dr. Hippensteel questioned the accuracy of Dr. Cohen's understanding of the [c]laimant's duties," and thus "appear[ed] to have continued to base his opinion that the [c]laimant is not totally disabled on an incorrect belief that the [c]laimant did not regularly perform heavy manual labor." Decision and Order at 10; Employer's Exhibit 16 at 2. Because the administrative law judge permissibly weighed the medical opinions on this point, *see Lane, supra*; *Walker, supra*, and substantial evidence supports his finding, we reject employer's allegation of error.

Employer further contends that the administrative law judge erred in according less weight to Dr. Zaldivar's opinion that claimant is not totally disabled because Dr. Zaldivar did not adequately explain how claimant could perform heavy manual labor

despite a moderate pulmonary impairment. As the administrative law judge found, Dr. Zaldivar assessed a "moderate pulmonary impairment" based on claimant's September 28, 1994 pulmonary function study, and stated initially that claimant nevertheless retained the capacity to perform his usual work because the heaviest part of the job was helping to change a tire or place a pin on the loader bucket. Employer's Exhibit 6 at 49-50. At the hearing, after Dr. Zaldivar heard claimant's testimony regarding the need to shovel coal and break up coal lumps with a sledge hammer, he stated that claimant's September 1994 pulmonary function study results "did not preclude the type of work that he did." Tr. at 112. However, as the administrative law judge found, Dr. Zaldivar did not explain this conclusion in light of his rating of a moderate pulmonary impairment. Thus, we conclude that substantial evidence supports the administrative law judge's finding that Dr. Zaldivar "did not explain the discrepancy between his assessment of a moderate pulmonary impairment and the job requirement of heavy labor." Decision and Order at 10; *see Lane, supra*; *Walker, supra*.

Furthermore, contrary to employer's contention, the administrative law judge did not assume that a moderate impairment necessarily precludes heavy labor; he relied on the opinions of physicians who concluded that claimant's moderate impairment prevents him from performing the tasks of his employment as a front-end loader operator. Director's Exhibit 30; Claimant's Exhibits 16, 25, 26, 32. Consequently, we reject employer's contention, and we affirm the administrative law judge's finding that the medical opinions established total disability pursuant to 20 C.F.R. §718.204(c)(4)(2000).[3]

Employer next contends that the administrative law judge failed to weigh together all contrary probative evidence before finding that claimant is totally disabled. *See Beatty v. Danri Corporation and Triangle Enterprises,* 16 BLR 1-11, 1-14 (1991); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986). Contrary to employer's contention, the administrative law judge found that although the predominantly non-qualifying[4] pulmonary function and blood gas studies did not establish total disability standing alone, when they were considered along with claimant's diffusing capacity test, they supported the medical opinions stating that claimant is totally disabled by a moderate pulmonary impairment. Decision and Order on Remand at 11; *see Walker, supra*. Review of the record reveals that employer's lead expert, Dr. Zaldivar, diagnosed a moderate pulmonary impairment based on a pulmonary function study that was non-qualifying under the regulations.

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[3] The regulation applied by the administrative law judge, Section 718.204, has been restructured. The methods of establishing disability cited by the administrative law judge at 20 C.F.R. §718.204(c)(1)-(4)(2000) are now set forth at 20 C.F.R. §718.204(b)(2)(i)-(iv).

[4] A "qualifying" objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B, C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

Employer's Exhibit 6. We hold that the administrative law judge adequately weighed the contrary probative evidence pursuant to Section 718.204(c)(2000), and that substantial evidence supports his finding. *See Beatty, supra*; *Shedlock, supra*. Therefore, we affirm the administrative law judge's finding that total disability, and hence a material change in conditions, was established. *See* 20 C.F.R. §725.309(d)(2000); *Rutter, supra*.

With respect to the administrative law judge's finding of entitlement, employer contends that the administrative law judge did not properly analyze the x-ray evidence to determine whether it supported a finding of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Employer's argument has merit. Review of the record reveals eighty-six readings of thirty-one chest x-rays taken between 1973 and 1998. There were twenty-four positive readings, forty negative readings, nineteen readings which were not ILO-classified for the presence or absence of pneumoconiosis, and three reports classifying x-rays as unreadable for pneumoconiosis. The overwhelming bulk of the x-ray readings were rendered by physicians qualified as Board-certified radiologists, B-readers, or both.

The administrative law judge charted the readings and the readers' credentials, and summarized B-reader, Dr. Zaldivar's testimony, explaining his negative interpretation of claimant's x-rays. Decision and Order on Remand at 12-18, 23; Tr. at 71-100. However, the administrative law judge's only analysis of this evidence was a brief statement that "[t]he x-ray intepretations are inconclusive as they are split largely along party lines." Decision and Order on Remand at 26. We are unable to review the administrative law judge's finding because he provided no rationale for his conclusion, other than to state that the evidence was conflicting. *See* 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); *Caudill v. Arch of Kentucky, Inc.,* 22 BLR 1-97, 1-101 (2000)(*en banc*). Consequently, we must vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(1) and remand this case for him to conduct a qualitative analysis of the x-ray evidence. *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).

Further, employer correctly notes that in finding the existence of pneumoconiosis established by the medical opinion evidence, the administrative law judge did not weigh together the chest x-ray readings, CT scan readings, and medical opinions. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 210, --- BLR --- (4th Cir. 2000). Therefore, on remand the administrative law judge should weigh together all relevant evidence to determine whether the existence of

pneumoconiosis is established.[5]

Regarding the medical opinion evidence itself, we also find merit in employer's argument that the administrative law judge did not adequately explain his analysis at 20 C.F.R. §718.202(a)(4) in light of all relevant evidence. The administrative law judge gave great weight to a surgeon's diagnosis of coal workers' pneumoconiosis, finding that the diagnosis was based on the physician's observation of lung fibrosis during an open thoracotomy. The origin of that fibrosis is disputed.

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[5] Employer does not challenge the administrative law judge's finding that a lung biopsy performed in January 1998 "was inadequate to support a definitive determination" of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order on Remand at 26. The hospital pathologist who examined this tissue did not diagnose pneumoconiosis, and a pathologist who reviewed the tissue for employer stated that it was insufficient to determine the presence or absence of pneumoconiosis because the tissue was not pulmonary parenchyma. Employer's Exhibit 9. Nevertheless, Dr. Zaldivar testified that the specific biopsy tissue findings were relevant to determining whether fibrosis seen in the miner's chest during surgery was pneumoconiosis. Tr. at 101-03. Therefore, the administrative law judge should include the biopsy evidence in his analysis under *Compton*.

Review of the record indicates that claimant has suffered from recurrent right lung collapses since 1959. In 1960 and again in 1998 surgeons performed thoracotomies to resect blebs and bullae from the right lung. Both times the surgeons also performed pleural abrasion with poudrage.[6] As described by Dr. Zaldivar, in this technique the surgeon intentionally causes trauma to the chest wall in order to create fibrotic adhesions between the lung and chest wall to help prevent future lung collapses. Tr. at 67-69.

Dr. John Chapman performed this procedure in January 1998 when claimant was hospitalized with a right lung collapse. Claimant's Exhibit 21. In an Operative Report, Dr. Chapman recorded that "there was noted to be a lot of lung fibrosis posterior wall." *Id.* In describing the removal of a "large bulla," Dr. Chapman stated that "the chronic adhesion/attachments to the chest wall were left intact." *Id.* Dr. Chapman then described how he peformed pleural abrasion with talc poudrage.[7]

In a Discharge Summary, Dr. Chapman listed "Recurrent Pneumothorax" as the "Principal Diagnosis," and listed coal worker's pneumoconiosis and diabetes as "Comorbidities." *Id.* Dr. Chapman did not relate the diagnosis of coal workers' pneumoconiosis to his observation of lung fibrosis, nor did he relate the fibrosis to coal mine dust exposure. When Dr. Echols Hansbarger and Dr. Zaldivar reviewed Dr. Chapman's Operative Note and Discharge summary, they concluded that his observation of "lung fibrosis posterior wall" was not diagnostic of pneumoconiosis, but was simply Dr. Chapman's observation of fibrotic adhesions which were intentionally created in claimant's 1960 surgery. Employer's Exhibit 15; Tr. at 101-03. Drs. Hansbarger and Zaldivar thus interpreted Dr. Chapman's diagnosis of coal workers' pneumoconiosis as simply a historical diagnosis reflecting the medical history provided to Dr. Chapman by claimant.

The administrative law judge credited Dr. Chapman's diagnosis of coal workers' pneumoconiosis, viewing it as the product of Chapman's surgical observation of fibrosis. The administrative law judge rejected the view that Dr. Chapman was merely describing fibrosis from prior lung surgery, finding that "Dr. Chapman was well-aware of the Claimant's prior surgical procedures for pneumothoraces, and I find it highly unlikely that he would have confused the two conditions." Decision and Order on Remand at 26. The administrative law judge gave greater weight to Dr. Chapman as a treating physician, and because Chapman "had the unique advantage of being in a position to examine the [c]laimant's lungs

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[6] Pleural poudrage is "the application of an irritating powder on the surfaces of the pleura to promote adhesion." *Dorland's Illustrated Medical Dictionary* 1247 (25th ed. 1974). The pleura are the membranes investing the lungs and lining the thoracic cavity. *Id.* at 1210.

[7] As noted above, the biopsy from this surgery did not yield a diagnosis of pneumoconiosis. *See* n.5 *supra*.

during open-chest surgery." Decision and Order on Remand at 27. The administrative law judge thus found the existence of pneumoconiosis established based on Dr. Chapman's report coupled with the opinions of claimant's other treating physicians, Drs. Doyle, Imam, Oscar Figueroa, and Werther Marciales.

Because we must remand this case for the administrative law judge to weigh together all relevant evidence to determine whether the existence of pneumoconiosis is established, we hold that he should reevaluate the medical opinions and fully explain his analysis in light of all relevant evidence. *See Compton, supra*. As noted above, Dr. Chapman's report does not connect the diagnosis of coal workers' pneumoconiosis to the observation of fibrosis, or relate the fibrosis to coal mine dust exposure. Claimant's Exhibit 21. In assessing the basis for Dr. Chapman's diagnosis of coal workers' pneumoconiosis, the administrative law judge should bear in mind that a diagnosis of fibrosis, without more, does not constitute pneumoconiosis under the regulations. *See* 20 C.F.R. §718.201. Additionally, the whole range of evidence relating to the condition of claimant's lungs should be considered.

Review of the record indicates chest x-ray and CT scan readings identifying pleural fibrosis and pleural thickening, more pronounced on the right side, with some readers stating that the fibrosis is probably due to surgery. Director's Exhibit 60; Employer's Exhibit 5. Other qualified readers, however, diagnosed pneumoconiosis on the same x-rays and CT scan. Claimant's Exhibit 1. Dr. Zaldivar testified that the biopsy tissue findings were consistent with intentionally created fibrosis outside claimant's right lung. Tr. at 101-03. However, Dr. Doyle, one of claimant's treating physicians, asserted that the hospital biopsy report included "histological findings that are consistent with pneumoconiosis." Claimant's Exhibit 26 at 2. On remand, the administrative law judge should consider all of this evidence and fully explain his analysis. When weighing the medical evidence on remand, the administrative law judge should address the comparative credentials of the respective physicians, the explanations of their conclusions, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

Employer contends that the administrative law judge's finding that claimant's total disability is due to pneumoconiosis is not supported by substantial evidence. Because the administrative law judge must reevaluate the medical opinion evidence in conjunction with the chest x-ray readings, CT scan readings, and biopsy evidence to determine whether the existence of pneumoconiosis is established, which analysis may affect his weighing of the evidence regarding disability causation, we vacate the administrative law judge's findings at 20 C.F.R. §718.204(b)(2000) and remand this case for him to determine whether pneumoconiosis, if found established, is a

substantially contributing cause of claimant's total disability as defined in revised 20 C.F.R. §718.204(c). *See* 20 C.F.R. §§725.2(c); 718.204(c).

Accordingly, the administrative law judge's Decision and Order on Remand--Awarding Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge